

# **SENATE SELECT COMMITTEE ON THE CALIFORNIA LEGISLATURE'S ROLE IN GLOBAL TRADE POLICY**

**Senator Tom Hayden, Chair**

**"NAFTA and the California-Mexico Border"**

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San Diego, California**

**SENATOR TOM HAYDEN:** I'm calling to order the Senate Select Committee on the California Legislature's Role in Global Trade Policy. And I'm joined this morning by Senator Richard Mountjoy and by my staff consultants, Guillermo Mayer and Anne Blackshaw.

We have a long list of witnesses. We want to keep on time. Mr. Mayer has indicated the translation service, and if the Sergeants could let people know as they come in, if they need translation, where they can go.

The purpose of these hearings is to analyze the impact of trade agreements, most notably NAFTA and the WTO agreements, on California's ability to shape its own political and economic destiny.

I was talking to one of our witnesses yesterday who reminded me that if you just watch the *Star Wars Trilogy*, particularly number one, you will find ample evidence that at least in the imagination of the *Star Wars* makers, these are the greatest issues before us. Even if they have to first be introduced to us as fantasy, they have a way of becoming reality. The fight against Gattica, for example, is well underway.

So, there are many ways to approach these issues. The one that the Select Committee has been focusing on is the issue of governance and democracy and the role of the Legislature. I'm going to talk about that and make reference also to some of the other perspectives on NAFTA as it affects the border, as it affects California and Mexico.

But primarily, I think we'll be talking today about the structural problems not of the economy but of the role of people like yourselves, your elected officials, in a decision-making process.

One of our witnesses, Mr. Stumberg, from Georgetown Law School in Washington, will testify that nearly one hundred California laws and regulations that our Senate and Legislature have passed, the Governor has signed, will be or can be potentially threatened as illegal interferences with the rights of global investors.

That's just a way of saying that, in this whole debate about trade, we forget, or some forces want us to forget, that there is a role for state government and local government that is in danger of being eliminated steadily, and it's begun.

The challenge, for example, by a Canadian firm against California's decision to eliminate the chemical MTBE from our groundwater supply is an issue that Mr. Mountjoy took the lead on in the Senate. I helped. Governor Davis issued an Executive Order. But a company in Canada that makes one of the components of MTBE is suing under NAFTA Chapter 11 for nearly a billion dollars -- \$900 million -- in what they consider profits that they would have made if California had not interfered with what they considered to be their property right to put this chemical into our fuel as an additive, despite the fact that it leaks into the groundwater and threatens public health.

A second example: With the support of the Clinton Administration, the forces behind the World Trade Organization sued successfully against the State of Massachusetts for having passed a law which said that they did not want to issue contracts to corporations that were doing business in Myanmar, or Burma, because of the gross human rights violations in that country. That was seen as a restraint of investors' rights and a placing of a state -- Massachusetts in this case -- in the position of the federal government. The U.S. Supreme Court upheld the WTO position, and the Massachusetts law is now under reexamination.

The City of Los Angeles, Alameda County, and many other parts of California have passed similar ordinances or laws which would be struck down.

To make it absolutely clear to you what this means, this court decision would have prevented the State of California from divesting its pension funds from South Africa in the 1980s during the period of apartheid. And whatever we think of that decision, we know that California had a profound effect on apartheid by sending a signal to other investors and to governments around the world that we didn't want our tax dollars to subsidize racial segregation and apartheid.

There are many other issues. The controversy about Mexican trucks and Mexican truckers coming over the border into California -- the issues of worker safety, wages -- that is being determined right now. I can tell you one thing: Whoever wins the dispute, Mexico or the United States, California will not be involved in it even though California lives, California roads, California tax dollars will be affected. Places like San Diego will become the doormat of the New World Order under these trade agreements.

What I want to communicate is that so-called free trade is not so free as people claim. Free trade would be a completely unregulated market system with no role for government.

But the NAFTA system is designed by government. The WTO system is designed by government. The issue is not no government versus government, but it's the centralization of all power in the Executive Branch of our federal government at the expense of local government and state government in order to facilitate a system of investors' rights and trade agreements globally.

So the City of San Diego will be a loser in this dispensation, so will the State of California.

Why is that important? Well, you are on the border, and presumably, you have strong opinions about what should be done. You will be limited to a purely advisory role, if that. And we'll get to that. Maybe you will have an advisory role. But you will have less and less power over the economic forces that affect the border.

The State of California is the seventh, eighth, or ninth largest country in the world, if we were to once again declare our independence and become a nation state. We would be one of the Top 10 in the World Trade Organization. But under the World Trade rules and the NAFTA rules, California has no voice in the decision-making process except whatever advisory voice we can chime in with.

Now, if this created a better economy for everyone in California and Mexico, some people might favor giving up the role of state and local government. But the evidence that I think you'll hear today is certainly difficult to fathom, but clearly, it's hard to say that NAFTA has been some kind of economic blessing on both sides of the border.

Where I come from, I'm very concerned about sweatshops in Los Angeles. And in a recent summary of some of the research you'll hear today, the *LA Times* reported

that 13,000 jobs have been lost just since 1997, and they discovered this through, I think, UC San Diego -- UC research -- because our state government doesn't do the kind of research that would be necessary to discover the job loss.

These are typically blue collar jobs, a woman working 12 hours a day for 150 bucks a week. She doesn't have the skills, she doesn't have the resources, to move up to a white collar job like a so-called global trade manager. That's a job category. You can go from the sweatshop to being a global trade manager, but it requires a college education, a number of skills, and mechanisms that are not in place.

So what I'm worried about in Los Angeles, for example, is a future of sweatshops for the many and web sites for the few. The debate on what that means will be interesting today because there's all kinds of arguments, pro and con, about the economic effects.

But the other effects, I think, are quite clear. Among them, increased militarization of the border. There's been a doubling of INS agents since NAFTA. There's been a tripling of the budget. Every year there's three or four hundred people who die literally to get into the United States, and their death certainly is mute testimony to the fact that the promise of NAFTA of all those jobs on both sides of the border has not exactly been realized.

But we can have differences of opinion about the economics of it. What I want to concentrate on today is this: that you understand the political and the process issues, since you are in the border area.

Under NAFTA and under the WTO, the federal government is required to "consult" (quote/unquote) "with the states" (quote/unquote) on a (quote) "regular basis." That's the implementing legislation: "Consult with the states on a regular basis." But there's no definition of consulting. It can be a press release, a phone call. It could be a conference. Not that that has ever occurred. There's no definition of a state. And so in California, the "state" is defined as the office of the Secretary of Trade and Commerce in Sacramento -- a person who comes from the federal trade bureaucracy to California. That office is in the promotion of California exports, and yet, it is in charge of all consultation on every implication of NAFTA for the state.

In previous hearings we've established that, for instance, cabinet officials in the Davis Administration representing the environment and natural resources have never been consulted. We have found that the Department of Industrial Relations in the

Davis Administration has never been consulted. I believe -- I could be overstating it -- but I believe that our hearings enlightened them as to the fact that they were potentially worthy of being consulted, but no one had ever bothered in the Davis Administration to pick up the phone and notify them.

The Attorney General is charged with representing the State of California but only does so when the state is challenged. For instance, in the Methanex case, there is a challenge. The Attorney General doesn't go to a courtroom, which you would do in the United States of America. The Attorney General doesn't appear before a court that's composed of judges. The Attorney General doesn't have access to the transcripts of testimony. In fact, in place of courtrooms, you have these tribunals that are composed of three people chosen by the affected corporations and governments. The tribunals are closed; they do not have transcripts; and there are no rights of appeal.

So, California's on the outside of the door, maybe in a friend-of-the-court briefing, forced to lobby the Clinton Administration, or lobby someone who's on the inside. But notice how the whole role of the public and civic society in the legal system is suspended. We have no access to it; reporters cannot cover it. No one knows what is said. There are no records kept and no records published except the decision itself. If that is not a usurpation of the justice system in America, I don't know what is.

So the purpose of this hearing is to, from my point of view as a Senator who's departing -- and there will be a continuation of the process, I would assume -- my concern is to deliver the following message into loud words: WAKE UP!! Californians, wake up! You are losing sovereignty, self-determination, the purpose of elected government.

California is becoming more and more a battleground in the New World Order without a voice. Without a voice. And this can only change if Governor Davis pays attention to it and if the Legislature decides to act before the rights of the State of California to pass laws -- health and safety laws, set-aside procurement laws for employing California residents, procurement laws favoring California businesses -- all of those sooner or later will go to these tribunals for challenge, and we'll have to rewrite them.

I don't know what, exactly, would be left of the Legislative Branch of state government in America. But Justice Brandeis, a long time ago, said, "The states of the laboratories of reform." That's where ideas are tested, and if the states are prevented from acting as laboratories of reform, then you may want to trust the people in Washington with your health, safety, environment, groundwater protection, employment opportunities, but they will be representing many more entities than the people of the State of California.

And so, this is a very critical issue despite its relative invisibility, and I thank you all for coming.

I want to welcome Senator Ray Haynes, who joined us just moments late, and ask either Mr. Haynes or Mr. Mountjoy if they wish to make opening comments or go to our testimony.

All right.

Mr. Casteñada, from Senator Peace's office, good morning. Yeah, I saw you over there. Please, get Senator Peace in here. Thank you for coming.

All right, the first witness is Dr. Robert Stumberg of the Harrison Institute for Public Law at Georgetown University Law Center.

Mr. Stumberg is the author of a report in 1995, which he's updating, on California laws that would be affected by these trade agreements.

Welcome, Dr. Stumberg.

**DR. ROBERT STUMBERG:** Good morning, Senator Hayden.

I see by your agenda that you're going to spend several hours talking about economics and the human costs and human benefits of NAFTA. I thought perhaps I could begin your day by talking about some of the big ideas that NAFTA, like other trade and investment agreements, brings to our legal system.

My theme is balancing democracy and trade. I must confess, I have not begun citing Hollywood movies in my legal writing yet in terms of this theme of balancing democracy and trade. But I've done my homework; I've seen the *Star Wars Trilogy*. And for those few of you who perhaps haven't, the Senator is referring to the military capacity of the Trade Federation to some very small planets, as opposed to small countries.

There are analogies in the history of this planet. The one I would bring to mind is the first continental trade agreement since the Roman Empire. It is represented in the United States Constitution.

What I basically do in my work is compare the United States Constitution to trade agreements. They're both designed to promote open trade: free trade between states or provinces or countries.

The striking difference between the two kinds of documents, however, is that while they're both constitutional -- that is, both trade agreements and our Constitution limit the power of government in very important ways -- trade agreements promote only open access to trade across borders; whereas, our Constitution maintains a balance. It's a balance between democracy and the trade in the sense that the founding framers of the Constitution recognized that there would always be tradeoffs between what's in the public interest, on the one hand, versus burdens and costs that could be shifted to business and private enterprise on the other. It's the job of a legislature, more than perhaps any other branch of government, to strike that balance.

And as I will talk about in just a minute, the things that concern me about the trade agreements are there are big ideas in them: principles of investor protection in part of NAFTA and principles of free trade in WTO agreements that are not balanced by this concept that the people making decisions over trade should have any deference to legislatures; that the art of compromise should be the principal criterion by which laws are reviewed, which is true in the United States under domestic law but it's not true under trade agreements.

So I came today to briefly answer two questions for you. They are, first of all, why is NAFTA and the other global agreements a legitimate local concern? Governor Davis has suggested in recent messages to you, Senator Hayden, that it's not. And secondly, what are appropriate local global roles? For this committee in particular.

In terms of why NAFTA, which I'll focus on, is a local concern, let me just say that, first of all, it's now apparent that there is a strong risk of legal conflict. There are dozens of trade and investment cases filed under these international agreements which go to the very core elements of sovereignty of any country, including the United States.

Let me just try to be brief by picking on examples from NAFTA's Chapter 11, which is a part of NAFTA that gives rights to international investors and empowers them to sue nation states, and it's distinct from the trade agreements that we all spend most of our time talking about in which the disputes are between countries.

Under NAFTA's investor rights, there are three cases which have been brought against decisions by state and local governments. In fact, all of the NAFTA investment cases are against state or local governments. And look at what they go to: such core sovereignty concerns as sovereign immunity. That's a case brought by a Canadian company against the Boston Redevelopment Authority.

A second key case involves a challenge of a decision made by a Mississippi state court jury and the Supreme Court rules of the Mississippi state government that require corporations to file a bond before they can appeal a case. That's so a company won't sell off all the assets and frustrate the attempt by the jury to impose punitive damages. The jury imposed those damages because the corporation had been convicted of fraud. And the purpose of the jury in that system in Mississippi, like most states, is to wield the ultimate weapon of corporate accountability, which is to award sufficient punitive damages to get the corporation's attention.

So the role of juries is a tool of corporate accountability in our society, is the second sovereignty issue.

And then, of course, the third is the complaint under NAFTA brought by the Methanex Corporation of Vancouver against your law, rather your whole policy, of phasing out a gasoline additive that is potentially a carcinogen and certainly something that tastes and smells like turpentine in the drinking water.

So, that goes to the heart of regulatory power of government.

All of these issues have been seriously debated before the Congress. And there are bipartisan coalitions in the Congress which have taken a different view than that shared by the foreign investors.

So such issues as regulatory reform, tort reform, and sovereign immunity, are issues that the State of California would have an acute interest in and, indeed, would lobby with full force if the same issues were being debated in the Congress, because California has been engaged in those debates.



And yet, when you take the issue outside of the Congress and put it before an international trade tribunal, all of a sudden it becomes an international affair that's none of your concern. That dichotomy strikes me as totally artificial.

And it brings me to observe that not only is there obviously now a legal risk of conflict, more than a pure theoretical risk, but actual cases moving through the system which threaten not only existing laws but, more importantly, the future of your lawmaking process, it's striking that state officials are absent.

I'm not going to focus on the role of the Attorney General so much or the Governor. Senator Hayden has alluded to those roles. What I will focus on is what the appropriate role of the Legislature might be, because my fear is that if the Legislature is missing--

[Microphone adjustments]

[Resume hearing]

When you're not in the trade debate, the middle is missing from the trade debate. Think about who the players are. On the one hand, you have multinational companies that dominate the American economy. The National Foreign Trade Council, for example, has 600 member corporations. On the other hand, every interest group that you could think of that might be adversely affected by trade, ranging from unions to environmentalists, to human rights activists, and it goes on and on, everybody's in the debate but the state officials who are elected. The middle is missing from the debate. And the people who care about exercising the power of government, your spending power, your taxing power, your purchasing power through procurement, and obviously the regulatory power in such cases as protecting the groundwater, it's you, the people, who hold and exercise that power who are missing from the debate. And when you're not part of it, the product is a policy for trade that is out of balance.

Now, my message is essentially optimistic. I'm here to assure you, because you have so much clout in the American political system, that if you simply sit up and participate in that debate and fulfill the roles that I'm about to list for you, I think that that mere participation is going to produce a significant shift in favor of balance that now is missing from the trade debate.

Let me briefly list what I think the roles are, and then I'd be happy to entertain questions about concrete issues as they're arising.

The four roles strike me as commonsense. First of all, it's to conduct your own assessment of the impact of trade agreements on state law. Learn from the past. Look at cases like the Methanex dispute but go beyond it. There's a list in my outline for you that shows you the diversity of state laws that we believe are affected not only by NAFTA's investor rights but also by the other eleven chapters of NAFTA that govern trade relations and the eighteen agreements that are part of the World Trade Organization. Food safety, organic standards, for example. Purchasing standards that are based on human rights or which are designed to promote local economic development. Regulation of the environment certainly. Services. Services are defined by the World Trade Organization to include public services, including those which are contracted out: water, sewage, management, environmental resources; all sorts of educational programs; health, including hospitals and insurance; and the list goes on.

These are the types of issues that we're now surveying and will be done by December in terms of coming up with a list of interesting legal conflicts, and from there we can begin talking to this committee and your constituents about the more political, pragmatic, and economic consequences of how those legal conflicts may be played out and how they may affect the lawmaking process of this Legislature.

**SENATOR HAYDEN:** Question from Senator Mountjoy.

**SENATOR RICHARD MOUNTJOY:** Regardless of what the Legislature does under NAFTA, the California State Legislature, the internationalists, the international business community, doesn't have to listen to our voice. I mean, isn't it a fact? The money that's invested in those international businesses is going to overcome -- oh yeah, they'll listen to it. Just like we send resolutions to the Congress of the United States, and they end up in the round file. It makes us feel good that we've sent a resolution. But isn't it the same thing regardless of what we would say as the California State Legislature? So long as NAFTA is not amended to give us some clout, how would we ever achieve the clout?

**DR. STUMBERG:** Well, let's begin with NAFTA. NAFTA can be amended to give you some clout. Unlike most trade agreements, NAFTA Chapter 11, the investor rights part of NAFTA, has a clause that says the presidents of the three countries that belong to NAFTA can interpret the terms and define investor rights. Vague and open-ended terms like fairness. The corporations want to interpret "fairness" to mean that the

Legislature must choose to regulate with the least-trade-restrictive option available to it. That's how they define fairness.

**SENATOR MOUNTJOY:** But that takes the president of three countries agreeing. They're in agreement, right?

**DR. STUMBERG:** Right.

**SENATOR MOUNTJOY:** Not the Legislative Branch.

**DR. STUMBERG:** That's correct.

**SENATOR HAYDEN:** But wait. Just to clarify, any of the three presidents of Canada, Mexico, or the United States can unilaterally make that definition?

**DR. STUMBERG:** No.

**SENATOR HAYDEN:** Or do all three have to agree on it?

**DR. STUMBERG:** They have to agree. But before the three can agree, at least one of them has to say, "I have a proposal," and not even the United States has made such a proposal.

**SENATOR HAYDEN:** And what is the scope of their flexibility again? What does it cover?

**DR. STUMBERG:** It covers the terms of the NAFTA investor rights under Chapter 11; and most importantly, terms like "the investor right to be compensated if the investor's assets are expropriated." That's an issue in the Methanex case. Or the term that "investors are entitled to minimum treatment under international law." What does that mean?

International law is a huge universe of ideas, and if investors can pick and choose among the universe of ideas which are foreign to American law, Canadian or Mexican law, who knows what the outcome of these cases will be?

Part of the problem is that, even if some of the first NAFTA cases are decided conservatively in terms of encroaching on sovereign powers of governments, it's the indeterminacy, the risk, that in the future these panels can rule against government that leaves legislators guessing all the time about whether a law will or will not be in conflict with NAFTA and whether the United States government will or will not be subject to billion dollar arbitration claims because of the laws that they enact.

Obviously, when you pass legislation and someone comes to you, a lobbyist, and says, "Why, you're going to trigger a billion dollar lawsuit," you're going to sit up and pay attention.

**SENATOR HAYDEN:** But isn't Senator Mountjoy right that if we wanted to get this President or the next President to make the proposal, we'd have no leverage beyond just the merits of our argument? Right? The State of California doesn't have a place at the table or a vote on any of this and no way to appeal this -- is there?

**DR. STUMBERG:** I think that's a bit of an overstatement of your powerlessness.

The Supreme Court has said that no longer should states expect to be protected by the court from preemption under federal law, including a trade agreement. Rather, the court said, states should see the Congress as the place where they go, like any other element of society, to advocate their own interests.

**SENATOR HAYDEN:** Right. But we would be lobbying Congress.

**DR. STUMBERG:** That's right.

**SENATOR HAYDEN:** Congress would have the power to do what we normally would do here. We'd be in the applicant role, right? Petitioner role.

**DR. STUMBERG:** The petitioner role.

**SENATOR HAYDEN:** Pressure group role.

**DR. STUMBERG:** You are the natural and, in fact, the only constituency for the power of states that can speak with the voice of authority because it's your power. It's not the labor unions, or the environmentalists, or the small business lobby's power. It's your power as elected officials. You have a kind of credibility that no one else in society has.

**SENATOR HAYDEN:** But, just the point is, is it not, that Congress can disregard California's position, even if it was taken unanimously by the Legislature, if they want to preempt California's role?

**DR. STUMBERG:** It can, but will it? If you think back to 1994--

**SENATOR HAYDEN:** I can give you examples before NAFTA where they did that.

**DR. STUMBERG:** I understand that, but if you think back to 1994 when the Uruguay Round was passed, and the World Trade Organization was created, the balance of votes in the Senate was unclear. And on the very eve of that vote, in order to assure the Senate that sovereignty was not a principal impediment to adopting the trade agreement, Senator Dole and President Clinton had a Rose Garden ceremony in which they announced "a plan." And the plan was a proposal, which was probably

itself unconstitutional, to build in a sovereignty protection device: a review panel of federal judges who would review any adverse decision against the United States. And only after that sovereignty protection fig leaf, as it's been called, was put out there by Senator Dole and President Clinton did the Senate go ahead and vote in favor of creating the World Trade Organization.

I think the sovereignty issue has perhaps a mythic proportion in the Congress of the United States, and the reason it's such a powerful argument is because politicians of both parties understand the importance of the basic rules for democracy.

Sovereignty is not a Republican issue; it's not a Democratic issue. It's an issue that people come together on from both sides of the aisle, and for that reason, the relative absence of partisan rancor over sovereignty that when you raise a sovereignty concern on trade issues, it has real political meaning in the Congress.

Link that together with the constituencies that care about the laws that are affected by sovereignty interests, the people who drink the water in Monterey, or the unions that are concerned about having to compete with farm workers who are paid slave wages, you link all those sovereignty constituency groups together and you've got something that amounts to a formidable bipartisan or multipartisan coalition that is not necessarily opposed to trade. Some of those groups oppose trade agreements, but what they all have in common is that they are for the exercise of government authority to advance the interests of environmental protection or human rights, for example.

**SENATOR MOUNTJOY:** If the lack of being sovereign nation came into play, under the Constitution isn't that a treaty, not a trade, agreement?

And wasn't there a suit -- and I'm not clear on this -- filed because this NAFTA agreement passed with a majority vote rather than a two-thirds?

**DR. STUMBERG:** Yes.

**SENATOR MOUNTJOY:** A treaty would require a two-thirds vote, a trade agreement a majority vote, but if the sovereignty of the United States was foregone in that agreement, it'd seem to me like it would be a treaty.

**DR. STUMBERG:** Interesting question. The Steel Workers Union filed a case in a federal court in Alabama that raised the very issue you mention, and the trial judge concluded that there was no constitutional problem with the trade agreement, even though it was not considered as a treaty.

Why does that matter to states? Well, because, if it's considered as a treaty, the document has to go before the United States Senate first and win a two-thirds majority, a super-majority which is obviously a much higher threshold. And then, before it's implemented -- such an agreement probably would not be self-implementing under the law; it wouldn't have an automatic effect -- it would still have to go back to the House to be voted on in terms of implementing the agreement. So both houses would still have to be engaged, but the Senate would have this two-thirds threshold.

So, not only is the hurdle higher if you go through the treaty process, but it's in the Senate where all states are represented equally. And smaller states, if they feel their sovereign authority is being impaired, have the same say as the larger states.

**SENATOR MOUNTJOY:** How did the judge come upon the conclusion that -- I haven't kept on the case, but I imagine there are some of the union folks here that would know, but I mean, how could you not believe that it did interfere in an area that would be concluded as being a treaty? That's kind of a twisted conclusion on the judge's part, I'd say.

**DR. STUMBERG:** Well, I think so, too, but he's the judge and we're not, and his conclusion was -- it's within this realm of politics and the courts. These issues are inherently so subjective and so political that judges can make decisions one way or another.

The Supreme Court just, for example, threw out the Massachusetts-Burma law on grounds that the court concluded that law was an obstacle to Congress' sanctions against the government of Burma, even though Congress never spoke to the issue of these state laws, and Congress knew that the state laws were in effect. In fact, Massachusetts adopted its law six months before Congress adopted its sanctions on Burma. And the legislators that I represented in that case, 78 members of Congress, said, *We just assumed that the states would continue with their legislation as they had in the anti-apartheid campaign.* They were surprised by the action of the courts.

**SENATOR MOUNTJOY:** Was the Steel Workers case ever appealed?

**DR. STUMBERG:** It's on appeal right now.

**SENATOR HAYDEN:** All right. Do you want to wrap up?

**DR. STUMBERG:** Let me wrap up by saying that we've been talking about the importance of states doing their homework, of assessing the impact of agreements on your laws and your process, but that's not an end in itself. There are three additional

roles you can play once you know that general impact of trade agreements on state law.

The first is the way you legislate yourself. Are there ways you should be legislating differently? For example, legislating in conjunction with other states. Not only because multistate activity might give you greater legal standing in terms of how a trade agreement works but because it gives you a stronger political footing.

If these cases are inherently so political in terms of what the Executive Branch or the courts decide, then the state legislatures have to be equally political in their legislating strategies.

The next role I want to mention is the obvious need to simply monitor ongoing trade negotiations. Every issue that we've talked about this morning is now being negotiated in terms of an expanded trade agreement or a new trade agreement. NAFTA, for example, is proposed to be expanded to the free trade area of the Americas, the entire Western Hemisphere. And so all the key issues in NAFTA, including purchasing and services and investment, taxation, all these issues are going to be part of that new agreement.

The World Trade Organization itself is now negotiating an expansion of its agreement on services. Exactly two-thirds of the California economy is services. So this agreement goes to the core of licensing and regulation of both public and private sector services by every state of the Union, including you, and the litmus test in that agreement is going to be whether or not your approach to regulating services is any more trade restrictive than it has to be.

**SENATOR HAYDEN:** Give us a more concrete or vivid example of a service that people are familiar with that could be affected.

**DR. STUMBERG:** Well, in the health sector, there are various kinds of health services, and the United States has obligated itself to follow this trade agreement in the context of hospital services and health insurance services.

So, if you want to propose, for example, the single-payer system, based perhaps on the Hawaii model, or if you want to think about ways to privatize hospital services that are now in the public sector to make them competitive but within the nonprofit sector, this trade agreement would block your options in terms of proposing such a hybrid market for providing hospital services.

**SENATOR HAYDEN:** On what grounds?

**DR. STUMBERG:** On the grounds that it's not the least trade-restrictive method available to you.

**SENATOR HAYDEN:** And the least restrictive would be what?

**DR. STUMBERG:** Free market competition for hospital services.

**SENATOR HAYDEN:** And that would open the market to anyone in the world. Is that correct?

**DR. STUMBERG:** Yes. And furthermore, that agreement would flatly prohibit you from--

**SENATOR HAYDEN:** It couldn't favor private services providers in California over--

**DR. STUMBERG:** Clearly not, because that's a violation.

**SENATOR HAYDEN:** --private service providers from France.

**DR. STUMBERG:** No. There's a separate provision that blocks you from doing that. But there is yet another provision of the services agreement that says you can't limit the kind of legal structure a corporation may take when it provides a service. So if you wanted to even build in a preference -- not a rule but just a preference -- for nonprofit health service providers, you couldn't do that under the agreement.

**SENATOR HAYDEN:** That would be struck down.

**DR. STUMBERG:** Yes.

**SENATOR HAYDEN:** All right.

You said you had four roles in mind. Did you cover them?

**DR. STUMBERG:** Well, the last one's obvious, I guess, but from what I'm saying, it is that California has a role to play in advising the federal government.

Let's just conclude with NAFTA Chapter 11 and think about the Methanex case.

I suspect that you have opinions about whether NAFTA's Chapter 11 should be now replicated on a larger scale in terms of the capacity of investors to sue nation states. I suspect that you now have opinions about this concept of fairness and minimum treatment under international law which allows investors to bring billion dollar claims against the State of California. And I suspect you also have opinions about the secrecy of the decision-making process and the fact that the legislatures are never consulted.

You were never consulted, for example, in the Mississippi case, even though you have court rules that are probably identical to the Mississippi court rules being



challenged. And the fifteen states that have MTBE pollution were never consulted when the case against California law was brought.

So, I'm suggesting that you have opinions about all these issues. You have not only a right but I would suggest an obligation to lobby the federal government so that it's aware of your concerns. And yet, there is no state government association and no individual state that has yet weighed in with a clear opinion on these matters, and I believe that this committee offers the first opportunity in any state to begin the homework necessary to play that role of advising the federal establishment.

**SENATOR HAYDEN:** All right. Another question from Senator Mountjoy.

**SENATOR MOUNTJOY:** There are now several states that are withdrawing from the use of MTBE.

**DR. STUMBERG:** Seven so far.

**SENATOR MOUNTJOY:** Yes. Senator Hayden and I cosigned a letter asking to be able to file an amicus brief on the Methanex case.

So it would be your opinion that we ought to get those other seven states that are now withdrawing from MTBE to go along with us on that to build our case.

**DR. STUMBERG:** Seven states and seven congressional delegations.

**SENATOR MOUNTJOY:** Right.

**DR. STUMBERG:** Yes.

**SENATOR HAYDEN:** Questions, Senator Haynes?

All right. Thank you very, very much.

**DR. STUMBERG:** You're very welcome.

**SENATOR HAYDEN:** You'll be here, and we might want to come back to you. Thank you for your words.

The next witness, Mr. Middlebrook, is not here.

Is Enrique Hernández or Octavio Maya here?

The testimony we're now going to hear I think has to do with the issues of labor organizing and maquiladoras on the Mexican side of the border and what the NAFTA side agreements do or do not do.

Am I correct?

**MR. ENRIQUE HERNÁNDEZ:** [Translated by Ms. Tanalís Padilla.]

Good afternoon. We thank you all for giving us the opportunity to come bring this testimony about the labor struggles in Tijuana.

We believe that the laws brought about under NAFTA, supposedly to protect our rights, did nothing more than to justify the process that NAFTA's undertaken itself.

We acted under good faith and placed a demand in the section of NAFTA meant to handle these types of complaints. But we're now aware that these side agreements were only made to ridicule labor in all three countries.

Yesterday we received the report, the review of labor rights, that was reviewed under the side agreements of NAFTA by the three countries. We'll leave you copies of these here if we can. But when we read them, we were trying to decide whether it was just mere fiction or whether it was actually the federal government washing its hands from the responsibility, because it says it has no responsibility to state government.

We wanted to present this complaint about our right to organize because of our experience trying for two years to form an independent union. In 1997, we were finally informed by labor authorities in our country, in Mexico, that we were not able to register our union because another union already existed. And here I'm referring to the case of Han Young.

And so what we decided to do was mobilize and ask for a count among the workers to see which union they wanted to represent: the one we had been organizing or the other union, which most workers did not even know existed, yet the company was claiming was a union that was representing all workers.

I would like to say specifically right now in reference to the last intervention that was made here, that the way these labor side agreements have been implemented, as we say in Mexico, "have no teeth," have no effect. There's no way to make them work. So we have to recognize that in all the debate prior to 1994, we lost that debate. We lost it to people who argued very effectively that NAFTA would bring modernization, would bring jobs, would bring higher wages. They won the debate on this.

And I think we made an error in actually believing or contemplating the fact that these labor agreements, or these side agreements would be respected and that the unions or any such groups would have any power, because, after all, these committees to review these side agreements are appointed by the federal government.

For example, in appointing a human rights commissioner in Mexico, we always look for someone to be appointed who's from the opposition. The government doesn't always listen to us in that, but we always try to effect that it'd be someone from the opposition and not from the government itself.

I think we need to bring the legislatures in all three countries closer to see what can be done for the application of the labor side agreements of NAFTA.

When we issued the complaint before the labor tribunals in NAFTA, we had been undergoing a hunger strike which had already lasted 26 days in terms of the labor dispute. And even though, thanks to our actions and thank the national and international pressure, we were awarded recognition of our union in January 1998, in practice we have been unable to do anything.

We have issued complaints against several companies. For example, a French company and the Lamex Company from Korea. The affilio from Hyundai. And it's the same story again and again. We win the count. We issued the demand for institutionalization of our union, and we're forced to appeal because our union isn't recognized.

The most dramatic cases of course, the case of Han Young, where we have won on five different times the count and our right to this union, and we continue to issue demands which go unheard. Recently, we just won another demand, saying that our union was, in fact, the true representative.

If you add that to the fact that our labor struggle has also been criminalized, today the lawyer as well as myself as general secretary of the union have been charged with four years of prison. All of this is due to once when we were being taken out of the factory by over 300 state policemen. We refused to leave the factory in front of all the press that was there, so we were charged with illegal use of liberty. But again, the strike was recognized as legal, so we could proceed with the strike. But before the federal court, this law, this injunction, had no weight.

We won a total of seven cases in front of the labor tribunals in the case of Han Young. And in terms of our own right to represent the workers, we have three different laws won already. And we have twenty-one injunctions of us that we have won against the charges that have been pressed against us. For us, the results are quite dramatic but not at all encouraging, so I would really encourage you to read the report that has recently been issued about the types of conditions we face.

When we wanted to participate in forming this report, we were all violently driven away, every member of our union, October 6th. But as you will see in reading this report, it says how fabulously all the labor laws have been implemented in Mexico.

I am really struck by the fact that there is no additional commentary either from Canada, from the labor unions in Canada, or the United States. Because it is one thing for us to present demands against them, but at the same time it's another thing when we have been publicly and violently ousted in front of witnesses.

I would also like to conclude by saying that the benefits of progress and modernity are evident. We have done an analysis since 1996 and have seen how, since then, the transnational companies have stolen ten times what labor is worth on the border. What they used to pay the twenty workers before, they now pay to a hundred. All of this is, of course, as a result of the devaluation of the peso and the crisis in Mexico.

But if you add to this the fact that labor rights are signed by unions which, in reality, don't exist in order to verify this process. This is the main tool of instrument that the maquiladoras use to protect themselves. This contract really requires the three countries to look at it closely. In Tijuana, 80 to 90 percent has this labor contract protection laws signed with official unions.

I would like to take a minute to explain this process because this contract of protection is something signed by a labor leader with the industry. The workers are never even aware or never told that there is a labor law or that there is a union. But that they, the worker, wants to have an actual union, they have to go undertake what we've undertaken, which is three years of struggle to form a union. And we're still not done.

I would like to now enable my friend here to speak from the--

**SENATOR HAYDEN:** Pregunta para Senator Mountjoy.

**SENATOR MOUNTJOY:** But his problem, and the union problem, is the same problem that we have under the lawsuit with Methanex. It can only be changed by the three presidents that have to get together and agree to local elections for unions. That's what needs to be done.

**MR. HERNÁNDEZ:** Yes, that's exactly right. I think it was a real oversight on our part to actually trust the labor side agreements because, in fact, they're dead letter; they have no effect.

**SENATOR MOUNTJOY:** Well, that's because the international businessmen have the ultimate power. So you could have all the elections you want so long as the

international business is the controlling factor in what happens. But unions lose, right?

**MR. HERNÁNDEZ:** Yes, we are aware of that, but if we are in a world that is globalizing, invited us to this world, and we were forced into it, and there were agreements between the various presidents of the three countries, there are agreements between the businessmen of the three countries, but what is not allowed is for the workers of the three countries to have agreement. That action is penalized. That action is criminalized. That action is viewed as an attempt against free trade. Nor are the legislatures of the three countries allowed to also have agreements.

**SENATOR MOUNTJOY:** That's why I was saying that you have to bring pressure on your President, we have to bring pressure on our President and the other President. I think that's what this committee's all about.

**MR. HERNÁNDEZ:** Yes, that's correct.

I would now like my compañero, Gabriel Morales, to speak.

**MR. GABRIEL MORALES:** [Translated by Ms. Padilla.]

Good afternoon. My name is Gabriel Morales. We are here from Tijuana, and I would like to share the experience that I lived personally.

Exactly two years ago, we were fired from the Action Company in Mexico, nine workers, for the mere right of trying to organize a union. We looked for legal protection with Enrique Hernández. We tried to affiliate ourselves with their union October 6th, but all doors were closed to us. Arbitration and conciliatory in Tijuana closed the doors to us, telling us that there already existed a union that had the right of representation over workers. This is, of course, completely false. To date, ten of us have been blacklisted so we are now unable to find work in the city of Tijuana.

That's the reality of it. Our laws are there, they're written, but the reality's completely different.

Thank you for your attention.

**SENATOR HAYDEN:** Gracias. I have just one question, if you know.

On the labor side agreement, the Han Young company is a subsidiary of Hyundai?

**MR. HERNÁNDEZ:** Yes.

**SENATOR HAYDEN:** And the issue was that the workers had to work without safety gear?

**MR. HERNÁNDEZ:** The problem emerged in 1996. Most of the people there who work in that maquiladora are welders who make chassis. But only a third of the workers receive the proper working attire to weld. And the only thing that has been increasing was that the head of this company granted a one peso raise, which is ten cents, for the whole year. While here, people receive a wage of five to six dollars an hour. In Tijuana, they are receiving thirty to forty cents an hour. That's one of the biggest difference.

**SENATOR HAYDEN:** My understanding is that the United States government Labor Department, after this became a big controversy, the U.S. Department of Labor has this office under NAFTA that made a finding that the government of Mexico had failed to address and remedy any of these safety violations. But then the U.S. government did not recommend sanctions be imposed on the Mexican government.

Is that correct?

**MR. HERNÁNDEZ:** Yes, there were some irregularities in that process. Because the only part under NAFTA that has a provision for sanctions is hygiene and work security, and in that there were plenty of violations found.

**SENATOR HAYDEN:** And just one last question. The right of workers to join unions is mentioned in NAFTA, but is it correct that a failure to protect the right to organize is not a punishable offense under NAFTA?

**MR. HERNÁNDEZ:** Right, it's just a recommendation. There's no form of applying the law.

**SENATOR HAYDEN:** Okay. Mr. Mountjoy?

**SENATOR MOUNTJOY:** The way I understood it was that the companies say there is a union but it's the union controlled by the internationalists, not a union controlled by the workers.

**MR. HERNÁNDEZ:** Yes, that's correct.

**SENATOR HAYDEN:** Muchas gracias. Thank you.

**MR. HERNÁNDEZ:** Gracias.

**SENATOR HAYDEN:** The next witness is Dr. Paul Ganster. Is he here?

We're going to look at the environmental side agreements. And this panel can come up if they're here. César Luna. Lori Saldaña. The three of you may sit over here, as you wish.

Thank you for coming. Who wants to start? Dr. Ganster?

**DR. PAUL GANSTER:** I'd be delighted, and then César can correct all my errors and omissions.

First of all, thank you very much for coming to San Diego to learn about concerns here in the community. It's, I think, very important for us in this region, so far from Mexico, so far from Washington, and so far from Sacramento, to have a chance for this interaction.

**SENATOR HAYDEN:** Do you want to describe your background, please, for us?

**DR. GANSTER:** Yes. I direct the Institute for Regional Studies of the Californias at San Diego State University. My training is in history, but I've been working on border, environmental, and policy, and economic development issues for the past sixteen or seventeen years. So I'm fairly eclectic and deal with a wide range of issues through applied research and other activities.

I do have some copies of a presentation that's a bit longer. These are available for people in the audience. I think the Senators already have one. And also, I did bring a book that I edited and was recently published that has a lot of background data. There are copies on the back table. The data are quite relevant, I think, to today's discussions in terms of basic information about environment and the larger context.

I'd like to start my comments today with a couple of words about the social and economic context because more and more I've come to feel that we can't talk about environmental issues solely as technical issues and without putting them in the social and economic and policy context.

Really, I think what I'm talking about is we have to talk about sustainable development and really understand the intimate link between economy, society, and quality of the environment.

Two outstanding features of the border region are population growth and the nature of the economy. The California-Baja California border region, which includes nearly half of the border population, is one of the most dynamic regions in the world in terms of economy and in terms of population growth that is primarily driven now by migration, whether from Michigan or Michoacan. People want to live in the California-Baja California border region, and they're moving in from both countries.

Right now in the California-Baja California border region, we have about 5 million people, and that includes Imperial, San Diego County, and the three Mexican municipalities adjacent to the international boundary.

Projections are -- and these are fairly high projections that assume a continuing rate of migration -- are that by the year 2020, the population for this area will be over 9 million people. So we're talking about a huge inflow of people and a huge, huge problem of coming to grips with all of the attendant issues.

Secondly, in terms of the border economy, there are a couple of things that need to be pointed out. First of all, Mexico's northern border economy is better off, by and large, than the rest of the country. There's relatively full employment; things are booming. In the post-1995-96 crisis, things in Tijuana were pretty good. However, despite that, over the long term real wages have not improved for Mexican workers in the maquiladora industry and in other areas. So despite economic growth, there has been little prosperity for working people.

And when I talk about working people and the poor in border cities, we're talking about 85 percent of the population. A small minority in Mexico are middle class and above.

**SENATOR MOUNTJOY:** When you talk about the middle class, you said 15 percent, I think, in your report here.

**DR. GANSTER:** Right.

**SENATOR MOUNTJOY:** What does that include? They're not workers. They're evidently a little higher than just the average worker.

**DR. GANSTER:** Some are small entrepreneurs. Some are workers, professional people. Sometimes two or three members of a family working in a maquila can kind of put people into that area. Sometimes it's working two or three different jobs.

**SENATOR MOUNTJOY:** So included in the 15 percent would be several members of one family putting money into the same pot. So that means that family, as a unit, had more, not the individual worker.

**DR. GANSTER:** Yeah, and improves disposable income and so on.

**SENATOR MOUNTJOY:** So that means that 85 percent are still poor, right?

**DR. GANSTER:** Barely making it, poor, and very poor. In Mexico, we're seeing the same trend that we've seen in the United States: a growing gap between the very



rich and the very poor. And Mexico has one of the most inequitable or unequal distributions of income in the entire world. I think that's changing, but it's difficult to deal with.

On the U.S. side, we've seen continued economic expansion in the border, but at the same time we've failed to create high value added jobs. As a result, the disparity between average incomes in the U.S. border region and the rest of the nation has grown. So on a per capita income basis, the border regions along the entire U.S.-Mexican border are getting worse year by year. And that's because of the restructuring of the economy. San Diego loves to talk about putting in new hotels and convention centers and creating all these new jobs, but many of them don't pay a livable wage and don't include benefits. And we've lost a lot of high-tech jobs. And this is a persistent problem in the border region, California border region, and along the rest of the border.

As a result, many business leaders in the border region are talking about how NAFTA's been good for both countries but has bypassed the border region. And the promised prosperity has not been realized in the border region.

Now, another point to keep in mind in terms of the economic context of all of this is the incredible economic asymmetry from one side of the border to the other. The gross regional product of Imperial and San Diego counties is roughly twenty times that of the equivalent area in Baja California. The municipal budget of Tijuana is about \$100 million. The combined budgets of all of the entities within San Diego County are getting up there towards \$4 billion.

Mexico is a developing country. It's a Third World country. The resources available to deal with environmental issues and infrastructure issues are very, very, very limited. And I think that's something we need to remember constantly because many cases the money simply isn't there to address things that we think should be addressed.

As a result of rapid demographic expansion, industrialization, and urbanization in the California-Mexico border region, we've seen ongoing problems in terms of environment, and many of these are related to saturated or deficient environmental infrastructure.

We've been experiencing a chronic infrastructure funding shortage in the U.S.-Mexico border region. Even San Diego, which is relatively well off, has a deteriorating

sewage collector system, and as a result, we're one of the nation's leaders in the number of days that our beaches and bays have to be closed for recreation purposes. This is kind of the dirty secret of San Diego is that these wonderful beaches we have are not always safe for human use, and that's the result of infrastructure problems.

And it's even more so on the Mexican side of the border. Tijuana is doubling its population every twelve to fifteen years, and it's almost physically impossible to build infrastructure fast enough to meet the needs of the citizens, much less catch up to what was lacking in the past.

Now, in terms of the major environmental issues of the California-Mexico border region, let me just say that all of these problems existed before NAFTA and I suspect will continue for many years to come.

The key areas are water supply. San Diego County has 3 million people. We have natural rainfall that would serve about 250,000. So 90 percent of our water's imported. Tijuana's also on the end of a very long and precarious pipeline from the Colorado River. So, over the long time, where is the water going to come from is a major issue that people on both sides of the border are dealing with.

Water quality, contamination of surface and underground water supplies, contamination of inland bodies of water such as the Salton Sea, and the near-shore marine environment are ongoing concerns. And this is produced by renegade sewage, agricultural runoff, and nonpoint source pollution. Every time we have a storm event in the region, it just flushes down all of the contaminants that have accumulated and causes problems in the near-shore marine environment.

Air quality problems are increasing in the border region after decades of improvement. And I think it's very much related to human population growth, urbanization, and industrialization. The primary culprit is the vehicular fleet, which has grown very, very rapidly, and congestion is increasing both in San Diego and Tijuana, and in Mexicali as well, and this tends to produce a lot more air pollution.

One of the solutions to the energy crisis in California that's been talked about is building more power plants. Well, you can't put power plants in San Diego where we're noncompliance with various air regulations without addressing a whole series of other issues. So, it's not quite as simple as it seems because the air pollution features of energy production are really quite important and have to be considered carefully in all of this.

Along the border we have significant concerns about hazardous waste from industry and the movement of chemicals that are used in normal manufacturing processes. And we also have some solid waste concerns that are okay right now, but over the long term we're going to have major solid waste, landfill, recycling issues to deal with.

Because of the huge population growth in areas such as San Diego, Tijuana, the Imperial Valley, and Mexicali, many natural areas are threatened by urban expansion. We've moved to address these in San Diego County through the Multiple Species Conservation Program, which is very important because San Diego County is one of the most diverse areas of the United States in terms of numbers of species. We don't have equivalent efforts on the Mexican side, and that's something we need to look at.

We also have growing environmental health issues related to the environmental problems that I've discussed.

Now, all of these have been exacerbated by the increased growth and expansion that resulted from NAFTA, but it's very, very difficult to say, you know, this problem was caused by NAFTA, because these things were going on before NAFTA, and I think we need to be a little bit careful when we're trying to assign blame.

**SENATOR HAYDEN:** Question.

**SENATOR MOUNTJOY:** But given the terms of NAFTA, and given the fact that the internationalists basically control any changes in NAFTA or any lawsuits, or whatever goes on, part of the attraction of moving businesses out of California and south of the border was that they could escape from our environmental laws, from some of our labor laws, from many of the laws that we had in California that were overburdening businesses. In fact, NAFTA did cause that because it caused a flood of businesses going into an area where they didn't have to comply, nor would they, and any smart businessman would take that step.

So, without NAFTA being under control of anybody except internationalists, that's a natural thing to happen. Do you see it changing without a complete change in NAFTA rules?

**DR. GANSTER:** Well, let me respond in a couple of ways.

First of all -- and I'll get to it in a minute -- I think NAFTA has done some things that have laid the groundwork for long-term environmental sustainability in the border region.

Secondly, the issue of companies fleeing the U.S. to seek pollution havens abroad is a longstanding concern. And even before NAFTA, there were a few cases of companies relocating to Mexico to avoid environmental regulations in the U.S. But one of the things we've seen in Mexico has been the emergence of a good body of environmental law, increased levels of enforcement. There's still a lot to do, but I think frequently the movement of companies to avoid environmental regulations is overplayed and tends to be based on anecdotal cases.

Some studies we did about a decade ago, where we interviewed a large number of companies to determine why they established facilities in the Tijuana region, put environmental regulations almost at the very bottom of the reasons for moving to the region. The basic reason was inexpensive, high quality labor. Secondly was location: next to the largest market in the world.

So I think the environmental issue, the concerns about companies, is sometimes overexaggerated. And my impression is, the large multinationals now tend to have worldwide environmental policies that they have in place for plants in the United States, in Canada, in Mexico, in Singapore, whatever. But we don't have a lot of good hard data to follow this up.

**SENATOR HAYDEN:** Dr. Ganster, I'm just concerned about the time. You have a twenty-nine-point presentation and you are on point 8, and you're doing very well. But--

**DR. GANSTER:** Well, you know, when you invite professors, that's what you're asking for.

**SENATOR HAYDEN:** I thank you. That's unsolicited from me. But to me, point 18, 19, 20, some of the later points, about these mechanisms for giving people a way to solve problems or whether they're meaningless mechanisms is closer to, I think, what we want to hear about.

You're establishing the problems. You're even arguing the problems existed before NAFTA. But if we could, I don't want to lose time to hear about these side agreements and these mechanisms that have been set up and whether they work or

should be given up on, or reformed, or whatever you have in the way of recommendations.

**DR. GANSTER:** Okay. I just want to make the point that I felt the major achievement of NAFTA had been the creation of new mechanisms for dealing with border environmental problems: increasing public participation and improving the public access to information on both sides of the border. Although things have lagged on the Mexican side, it's an incredible change from a decade ago.

We've seen increased U.S. federal agency involvement in the border, and I think particularly critical for those of us in this region has been that the State of California has moved in a fairly systematic way over the past five years or so to increase the number of people who deal specifically with border environmental issues, and these are across many agencies, and I've detailed some of those in my presentation here.

The point is, that more and more state resources are going to address these types of issues, and I think it's setting the stage for the long-term types of solutions that we need in the border region.

Particularly important in all of this is the fact that California state agencies are now working closely with Mexican counterparts, recognizing the principle that you can't deal with environmental issues that spill over the border without having binational cooperation.

As a result of regulatory efforts and heavy criticism from nongovernmental organizations, for the first time we're seeing proactive steps by industries, by maquilas, to address environmental and community related issues. It's just a beginning, and I think that's going to provide some long-term solutions.

The federal government of the United States and in Mexico I think have recognized that they simply can't do it all on regulation and they have to have voluntary participation by industry, or many of these problems will never be solved.

Let me just sum up a few points about the NAFTA effects on the border environment and then conclude with some recommendations. And then, of course, I'll be happy to answer questions.

As Senator Hayden mentioned, I do point out that most of the environmental problems that we have with us today have been around for a long time. NAFTA has exacerbated these but at the same time NAFTA has laid the groundwork for new institutions to address these issues.

There's still major concern in the border region about NAFTA's broken promise, the failure of both governments to adequately address border environmental issues.

Now, in all of this I think there's some opportunities for the State of California; I think state focus on dealing with funding mechanisms for binational projects. We're living next to a developing country that has very, very limited resources, and expenditure of California funds on projects in Mexico will have very direct benefits to residents of California. These are defensive expenditures that we need.

Also, one very minor point, but it's been a matter of concern to me for many years, many of our State of California employees have a real difficult time functioning in our binational community because they have to go through a very bureaucratic process to get permission to cross the border to interact with a counterpart. Going from San Diego to Tijuana is viewed by the state bean counters as international travel and therefore a luxury. We need a legislative remedy to permit state employees to function in the border region on both sides; otherwise, we can't develop the synergies we need to deal with our problems.

Another area that I think is very, very important where we need help from the state is to facilitate more binational planning by state and local agencies so we can begin to look at the region as a region, understand the binational regional problems.

One example of the type of cooperation I'm talking about is an atlas that we recently published that takes a section of the border between San Diego and Tijuana and creates equivalent coverage for both sides of the border. So this is the first time we've had detailed land use maps for the section of the border between San Diego and Tijuana, the first detailed mapping of sewage systems, of vegetation. And our local, and state, and federal decision-makers, and other stakeholders need this type of data in planning support to make reasonable decisions.

I'll pass this around so you can have a look, and if anyone here on the committee would like a copy, let me know.

Let me just conclude with a mention of a few things that I think are coming down the line that I think you might want to be thinking about.

The new California and U.S. standards for heavy-duty diesel exhaust are going to have an incredible impact in the border region. Because of the great increase of trade due to NAFTA, the increase in diesel truck traffic has been tremendous in California and elsewhere along the border. Otay Mesa now is up to three or four

thousand trucks a day crossing, and a pre-NAFTA was well below that, maybe around a thousand. And diesels produce most of the particulate matter in the region, very damaging to human health; and also, the State of California has determined that these are carcinogenic.

We need to move more in terms of transboundary environmental impact statements, so that when Mexico proposes a large project on its side of the border, there's full consultations with people on our side of the border who might be impacted by the project, and vice versa.

We need to move forward with the whole concept of trading pollution permits in the region, to address regional air quality issues.

Water market development, I think is something that's probably coming down the line, but that's a pretty difficult area.

Also, the whole issue of water for endangered species and endangered habitats, which we have in the United States as a result of the Endangered Species Act, is something, I think, might come to bear on a number of areas in the California-Mexico border region, particularly the Lower Colorado Delta where the ecology has been heavily impacted by upstream water users.

We have increased citizen participation in the U.S. and Mexico on border environmental issues, and I think we're going to see more of that in the future.

And finally, in Mexico, the country is undergoing a real revolution that's been pushed forward by NAFTA, and a major element of this is administrative decentralization. So for the first time, we're beginning to see municipalities given the responsibility for air pollution control equipment on the motor vehicle fleet, monitoring, inspection, and all of those sorts of things. And I think this is a marvelous area where cooperation by California state agencies can push the agenda on both sides of the border to benefit people on both sides.

Thank you very much.

**SENATOR HAYDEN:** Question from Senator Mountjoy.

**SENATOR MOUNTJOY:** Of the operation through Otay Mesa, what is the percentage of Mexican trucks versus California type or U.S. trucks?

**DR. GANSTER:** That, I don't know.

**SENATOR MOUNTJOY:** Because the trucks from Mexico are unregulated as far as our diesel laws, as I understand NAFTA. So that would be an important thing to understand.

**DR. GANSTER:** I think if we're talking about addressing the heavy-duty diesel issue, it has to be for any trucks operating in the State of California.

**SENATOR MOUNTJOY:** Yeah, but under NAFTA, that's not regulated. I mean, we don't have the right to regulate.

**DR. GANSTER:** Well, we can for safety, and I think we have a right for pollution of vehicles. The bill that Brian Bilbray got through, HR 8, certainly regulates passenger vehicles from Mexico coming into the U.S., into California, on a regular basis.

**SENATOR MOUNTJOY:** Somebody's shaking their head no.

**UNIDENTIFIED SPEAKER:** Not commercial vehicles and not trucks.

**DR. GANSTER:** That bill doesn't cover trucks, but I don't know whether we do or do not have the right to--

**SENATOR MOUNTJOY:** So the important part of your statement is we have these 3,000 operations coming through Otay Mesa itself. What portion is which? I think that's an important environmental consideration, to say the least.

**DR. GANSTER:** Absolutely.

**SENATOR HAYDEN:** I had a couple of questions.

Just to catch up. On these mechanisms that you mention in your testimony -- the Trilateral Commission on Environmental Cooperation, the Border Environmental Cooperation Commission, and so on, the NADBank -- is it true that the Commission for Economic Cooperation has investigative power but not enforcement power?

**DR. GANSTER:** I don't know the details. They have--

**SENATOR HAYDEN:** Well, that's not a detail. It goes to the issue of whether or not the agreement has teeth. Does it have enforcement power?

Saldaña says no. All right, thank you.

On the issue of -- I'm sorry to be so abrupt. I'm just trying to get the record set and make sure we're on time.

**DR. GANSTER:** I'm used to abruptness.

**SENATOR HAYDEN:** No, no, I didn't mean it that way at all.



This may sound like a very small question, but I'm fascinated with these details.

Is it true that under these agreements, that the colonias are not referenced as incorporated entities in the process?

**DR. GANSTER:** Are you talking about the U.S. side?

**SENATOR HAYDEN:** No. I understand there's a half million people in colonias.

**DR. GANSTER:** Well, these are urbanized areas in Mexican cities that are--

**SENATOR HAYDEN:** No, I ask it because I'm trying to get at the due process and representation mechanisms. My understanding, and I want you to just tell me whether it's correct or not, is that as such, a colonia, the community, does not exist in these agreements as an incorporated entity. You have to be an incorporated entity to participate, to have a voice, to even play an advisory role.

Am I accurate?

**DR. GANSTER:** Well, I think you're talking about the municipality, which is the incorporated unit of local government in Mexico. And a community within that--

**SENATOR HAYDEN:** No. Are there areas that are populated but not incorporated?

**DR. GANSTER:** In Mexico, no. Because they're all part of municipalities, which is the basic form of local government. It's somewhat similar to La Jolla is part of San Diego and is not politically independent as such but is represented through the city of San Diego -- or not represented.

**SENATOR HAYDEN:** Does San Diego have district elections? [Collective yes] Is there a La Jolla district?

**UNIDENTIFIED SPEAKER:** [Inaudible]

**SENATOR HAYDEN:** Okay. Maybe somebody else can add on. I'm trying to understand how people are represented in these--

**DR. GANSTER:** There are districts within Tijuana, for example, and people elect district council persons. There are mechanisms for participation in local government. And I think one of the great achievements of NAFTA has been to support democratization in Mexico, and I think we've seen that with the recent presidential elections in Mexico quite clearly.

**SENATOR HAYDEN:** Well, maybe, maybe not. I'm not sure. You're saying that NAFTA led to the Vicente Fox election? That was a democratic election.

My question is in the border agreements to enforce environmental protection so that we avoid the phenomenon of people investing in areas where they can avoid strict environmental laws. I'm just trying to understand the mechanisms. My first question was about the CEC.

Do you have an opinion or material on this North American Development Bank, the kinds of projects that it has financed? I know that Ms. Saldaña does.

**DR. GANSTER:** I think Lori can cover that because she's affiliated in an advisory way with the BECC.

But the NADBank has some constraints through legislation and/or interpretation of the legislation and is forced to lend at market rates.

**SENATOR HAYDEN:** And so how would a poor community benefit from that bank?

**DR. GANSTER:** Creative financing. NADBank has been fairly active in putting together loan packages that include some of the money they have to lend at commercial rates, and grant money.

**SENATOR HAYDEN:** And that would reach the poorest of the poor?

**DR. GANSTER:** Well, it's reached many poor communities on the U.S. side of the border and has benefited many poor communities in Mexico as well.

**SENATOR HAYDEN:** Okay. Can you just, in written form, submit the data substantiating that claim?

**DR. GANSTER:** Sure.

**SENATOR HAYDEN:** I don't have it. I mean, we get their material and we just have to set it aside looking for independent evaluation. It's very difficult to obtain independent.

Is, for example, there supposed to be data collection on environmental pollution under NAFTA? And is it occurring on the Mexican side?

**DR. GANSTER:** Well, there's a Border 21 workgroup that's worked hard to try to improve data collection on both sides. On Mexico, we've seen increased collection and release of data related to the environment. However, what is collected and what is released is limited.

For example, we now have a functioning air monitoring network on the Mexican side of the border, thanks in large part to EPA and the California Air Resources Board, and that's providing hard, reliable data about air quality.

What we don't have good data on are amounts of hazardous materials produced, movement of hazardous goods because of imperfect tracking systems, and also, Mexico's laws and regulations do not permit release of plant level data. So there's a data gap there that needs to be addressed.

Basically, the border is a data-poor environment. In the past, we've had better data on the U.S. side, but now we're noting that U.S. agencies are collecting less data, and instead, some of that is being privatized, so access to U.S. data is becoming more difficult as well.

**SENATOR HAYDEN:** All right. Just one last question going back.

I have some information, and I don't know if it's correct, and you can respond or give us your response later. But going back to the Development Bank, we had this similar institution created by the feds during an election fever time in Los Angeles. I don't know if it's folded up but it continually is reported to have done almost nothing, and I'm not quite sure why. But the information I have on this North American Development Bank is that it was capitalized at a half billion dollars, I think, and as of the beginning of this year, it had dispersed \$15.6 million in grants and \$4.6 million in direct loans. Is that the ballpark?

**DR. GANSTER:** No, that's way low. Maybe Lori has more recent data.

Let me just make another point about NADBank. NADBank is not a U.S. institution. It's a totally new binational institution with equal Mexican and U.S. participation. NADBank and BECC were both slow to get up and functioning because, in essence, two new binational institutions had to be invented and set up and made to operate.

I work with the Border Trade Alliance and initially they were extremely critical of BECC and NADBank because they kept saying, "Where's the money? Spend the money." But now they've come around and are much more supportive of NADBank, even to the point of going to Washington and trying to lobby for more grant funds for NADBank to use.

So I think the institution's a winner. We need to adjust its regulatory framework and continue to provide funding.

**SENATOR HAYDEN:** All right. And a last question that you or others can answer as you testify, but I want to get very clear on the record, who appoints the directors of the Trilateral Commission on Environmental Cooperation, the Border

Environmental Cooperation Commission -- that's Ms. Saldaña's domain -- the NADBank, or North American Development Bank? And what's the appointments process? Are they vetted for conflict of interest? Are there qualifications required? Is there confirmation by the three governments, or are they appointed by the executives? And, who from California are on the boards of any of these institutions, and how are they chosen?

That's a long answer, but I'd expect or hope we could get something in writing. But as you testify, I'd like answers, because it goes to the heart of whether these are accountable institutions.

I know people will say we have countless advisory meetings, and the number of people who've attended our workshops is in the hundreds or thousands. But looked at from a politician's standpoint, the only issue is, who has the power to write the check? And how did they get the power? Who appointed them? And what are the qualifications? And do local elected officials or state elected officials have any role in directly impacting those decisions?

**DR. GANSTER:** Well, let me just make a comment on the Commission on Environmental Cooperation, the CEC. The three environmental ministers are the governing body of that.

**SENATOR HAYDEN:** So that would be the United States EPA?

**DR. GANSTER:** Talk to Carol Browner on that.

You know, the tension between state and federal environmental agencies is a problem, and frequently, federal actions cause problems for people in local communities and in states.

Now, I think Lori can explain the whole process for NADBank and back.

**SENATOR HAYDEN:** She keeps getting referenced. All right, we'll get to her. Is there anything else?

All right, let's go to the next witness then, Mr. Luna.

I'm sorry, Senator Haynes had a question, or a series of questions. Forgive me.

**SENATOR RAY HAYNES:** I'm not sure if you're the right one to ask the question, but in looking through some of the stuff, and you mentioned the Border 21 workgroup, I kind of wanted to get a feel for what they do, what their long-term purpose is, and what they expect to do -- you mentioned some data collection -- what they expect to do with the data.

**DR. GANSTER:** Well, the Border 21 workgroups were based on the 1983 La Paz Agreement between the U.S. and Mexico to address border environmental issues. And a series of workgroups were formed at that time under the appropriate federal agencies on technical areas such as water, air, hazardous waste, so on and so forth. Those eventually came to include participation of state and local officials and some nongovernment people. They've been ongoing groups. They've met periodically. And what they try to do is work in a continued way on specific border environmental issues.

One of the workgroups that has been active in recent years is a Border Environmental Information Workgroup, and they're trying to harmonize data collection, make more data available. And also, they've developed an Environmental Indicators Project, and the first tranche of that was released, published, a year or two ago, and they're now working on a second round of that.

The indicators effort is very important, because if we're looking at the same types of data, measuring the same sorts of things, over a period of time, then we can tell in a reliable way whether we're making progress or whether we're going backwards.

So I think they're making a pretty good process. In most of the workgroups, there seems to be pretty good participation and integration of state level officials.

**SENATOR HAYNES:** The reason I ask is that I noticed -- was it the BECC, the Border Environmental...something?

**DR. GANSTER:** Cooperation Commission.

**SENATOR HAYNES:** Yeah, Cooperation Commission, was going to do something within a hundred kilometers of the border, which actually bounces up into my district, and I'd had some constituents who had bounced up against some local planning folks saying the Border 21 folks are saying, *We can't let you do this and we can't let you do that.*

I ask these questions because we'd had a discussion a little bit earlier about sovereignty, and sovereignty is always important in the first person: my sovereignty. It is never important in the third person: their sovereignty. And so, local governments are very concerned about their power, state governments are always concerned about their power, and the federal government's always concerned about its power vis-à-vis international group.

But the federal government doesn't care about us, and we don't care about the local governments, in whether or not they have the power to do what they want to do; at least when we have our agenda. If our agenda is to control the land use in San Diego County, if the state's agenda is control the land use in San Diego County, we are more than happy to take it away from them because we're obviously smarter than those folks in San Diego County.

And I'm being sarcastic. Should it ever get printed that I'd actually said that, I'm actually being sarcastic, unless that's not clear -- if it's not clear.

And the concern I have is the concern that always runs in when you're bouncing up against environmental issues. The first thing that those who have an agenda want to do is take away the powers from those who disagree with their agenda.

Does NAFTA give any of these organizations the power to dictate to local governments how they're going to organize themselves, using some sort of environmental regulation as the basis for dictating outcomes?

**DR. GANSTER:** Not to my knowledge.

The hundred kilometer limit was set rather arbitrarily by the 1983 La Paz Agreement, which is viewed as a treaty for Mexico because their Senate ratified it, and as a presidential agreement from our perspective because our President signed it, and it was not ratified by the Senate.

And BECC operates within this area, but BECC doesn't have the power to enforce land use or dictate land use. It has the power to receive proposals for environmental infrastructure projects, to analyze those, to vet them, and to approve them. If approved, after a process of public input, then they're sent to NADBank for funding.

So, there've been a lot of rumors circulating about BECC. In Arizona, local people were convinced that the BECC was going to bring in the black helicopters and the people in blue helmets.

**SENATOR HAYNES:** Well, my concern was what power they have right now. I mean, the rumors and that sort of thing -- if the issue is power to spend money, like I said, I'd had some folks, constituents of mine that own land, that had bounced up against some local officials that were telling them that it had more power than it did. My concern was how I relate that back to them, and that's the purpose of my question.

**SENATOR HAYDEN:** All right.

Next witness, Mr. Luna.

We're really going to have to step on it, or Raúl Hinojosa-Ojeda is going to be very mad, because he's going to arrive and we're going to be gone.

**MR. CÉSAR LUNA:** Very good.

Good afternoon. My name is César Luna. I represent the Environmental Health Coalition. I would like, on behalf of EHC, to welcome you to San Diego-Tijuana, which is also known as the gateway to NAFTA, or NAFTA's laboratory, or also the "Home of the Triple Fence" and "Operation Gatekeeper," which is a contradiction in terms, but I guess Roberto Martínez will address that issue in a few moments.

You have wonderful questions. My mission is to try to relate California to this whole abstract notion of free trade. We want to submit that, to us, it's a local issue. It's not an international issue. It's not a national issue. It's an issue that affects us both here in our region of Tijuana-San Diego. And we do commend you for your interest and your concerns in addressing this issue, because we do see it as a local one.

Environmental Health Coalition's mission is -- we've been working for twenty years now, this year being our twentieth -- in promoting and protecting our community's health and environment. We are a local environmental justice organization that has been working for quite a long time in issues related to border pollution.

I'm the interim director of the Border Environmental Justice Campaign, and our mission is to deal and struggle with these issues that have an abstract but when we work on everyday, we see the faces of NAFTA. We see the impacts that NAFTA is creating in our communities.

Unfortunately, some of the struggle that I'm sensing today is that we come to the realization that we're talking on the post-NAFTA era: There's very little we can do now. But there's a lot of work to do because, obviously, NAFTA has not solved our border problems. In fact, I will submit to you that in terms of environmental and health issues, it's actually made it worse. Clear and simple.

Anyone who has visited Tijuana or Mexicali, or any other border town, will agree with us that there's a serious problem in pollution. No question about it. You just have to drive down and take a smell at some of the industrial parks or drive through these colonias that continue to lack basic infrastructure to survive. It's very clear.

For most of us who have worked in this field, we'll recognize that the U.S.-Mexico border has a terrible, chronic environmental problem. And how that affects California is clear, and I will try to illustrate that with clear examples.

But just as the presenters earlier, when we talk about the winners and the losers from NAFTA and from these quasi free trade agreements, it's very clear that the poor and the environment and health are the losers and the corporations and the investors are the winners. It's also very clear-cut, and also from the presentation from Dr. Stumberg, it's very clear that in terms of democratic process we're losing it. We're losing it, and I will also try to illustrate that as well.

When we talk about some of the environmental issues around the California-Baja California border, I don't want to be repetitive as to what Dr. Ganster just stated, but what we have seen is this exponential increase in industrial activity has created a direct as well as an indirect impact on our local environment.

One of the most obvious ones and clearest one is the lack of knowledge that we have with respects to the transfer or the use of hazardous chemicals along our borderlines. We have no idea yet on how much chemicals and hazardous waste are being stored, used, transported, shipped. Even according to Mexico's figures, they can only account for 20 percent of all the ways generated along the border.

That's a huge concern, given the fact that in Tijuana alone, we are growing up to 1,000 maquiladoras. That's not to talk about the Mexican industrial activity. But just in terms of U.S. corporations operating in Tijuana, we're reaching a very, very important point where most of these industrial sectors generally use very hazardous chemicals, such as solvents, toluenes, heavy metals, and when we don't have an idea where they go, or how they're being stored, or how they're being controlled, we have to be concerned about it.

**SENATOR HAYDEN:** Is there an increase in lead emissions?

**MR. LUNA:** Actually, there was just a report being conducted by -- I believe it was UC Riverside -- Dr. Erickson. John Erickson, I believe. I don't have that particular information, but what I can say is that lead as an industrial product, raw material, is increasing in use only because maquiladoras are increasing. Their exponential growth in industrial activity leads us to believe that there is an increased amount in these type of substances.



Now, the other obstacle we have is that we don't have a right to know legislation placed in Baja California that would allow us to actually dig those numbers and realize what we have in our hands.

So that's part of the direct problems. Of course, the indirect problems relate to some of the issues that Dr. Ganster already addressed like population, pollution related issues such as sewage, such as lack of infrastructure, water, and air pollution.

Other serious problems that we are continuing to see with respects to how California and Baja California are acting is using California as an effective shield from liability. And I'm going to illustrate that as well, and I think that that's something that maybe the Legislature in California might work out.

But in terms of how pollution actually affects California, we all know that pollution respects no borders. And California and Baja California share the same air, the same water, the same people, the same culture, as well as goods and services.

Because pollution does not respect borders, we've had a consistent pattern of toxic disasters that have, at some point, come back to us. And we can go on a long list of events that have happened in the past that are potentially or could be related to flawed trade policies that are affecting our state as well.

And by saying that, I don't want to even infer that I'm putting the blame in Mexico. This is a binational problem that requires binational solutions, and I don't want to place the blame on the victims as well. All I'm saying is that we are also victims in this uncontrolled trade policy that is escalating in global terms.

For example, the New River. The New River is a historical problem that for decades it's becoming a symbol of bad trade policies and the lack of two countries getting together and solving a river that is traveling northbound from the city of Mexicali to Calexico and El Centro, California, that is ending up in the Salton Sea and on its way carrying everything from pesticides to sewage, to industrial waste. That industrial waste, that also comes from U.S.-owned maquiladoras.

The Tijuana River is a similar example where we have a body of water that travels from south to north that ends up in U.S. territory, that carries a lot of chemicals, a lot of sewage, and it's been a historical conflict between San Diego and Tijuana.

Pacific Treatment. Pacific Treatment is a San Diego based corporation that serviced as a transfer station for the handling of maquiladora waste. Well, in 1997,

that company, in Tijuana, Baja California, went up in flames. It burned to the ground. It burned about 200 tons of hazardous materials. The cause was unknown. No investigation was ever done. Plumes of toxic materials, including organic solvents, toluene, acetones, xylenes, paints, you name it. Burned to the ground, right next to a colonia, and because we also share the same airshed, it could have potentially affected us. No one did anything about it.

The list goes on: Metales y Derivados. Metales y Derivados is also a maquiladora owned by a San Diego based corporation called New Frontier, who operated in Tijuana for many, many years, accumulated 6,000 metric tons of lead slag in their smelting operations. When the Mexican government finally caught up to them, they just picked up and left. Came back, and right now they're here in San Diego, California. Their corporation is still well alive, and they're effectively shielding themselves from any liability as a result from their irresponsible actions.

Now, again, this goes to show where -- just before I finish this -- the places where these abandoned sites, such as Metales, are also in a common watershed; a common watershed that also could potentially end up as part of the Tijuana River and could potentially also come back to the U.S., affecting California.

So what do we do? Well, we try to test what we have in hand, and what we have in hand are these NAFTA mechanisms that you've already addressed.

The CEC. The CEC is an institution that has absolutely no enforcement powers whatsoever. Their mission in terms of hearing quasi judicial actions is only to receive citizens' submissions when a country is not effectively enforcing its environmental laws. So what we need in the Metales case was to file a submission, complaining that Mexico was not effectively enforcing its law because this dumpsite was abandoned, and they had not requested extradition of the owners that were located in San Diego.

Well, this petition is a long, obscure, complicated process that the end result only provides what is called a factual record. A factual record is an assessment of the facts, but it does not have any recommending power, doesn't have any conclusions. It doesn't have any enforcement mechanisms. It can't even tell whether or not a country did or did not enforce its law. It's only a process where we can hope can bring to public light whether or not a country has effectively enforced its environmental problems.

Now, if you compare that with what has been discussed before under Chapter 11 of NAFTA, you can see the gross discrepancies between corporate power and people power. And after two years of submitting this petition, in light of the fact that we have 6,000 metric tons of arsenic, and lead, and cadmium virtually abandoned right next to a poor colonia, it's frustrating to look at these mechanisms and not know what to do. Because the other part of the story is that this guy is here in San Diego, claiming to be making close to one million dollars in sales in his New Frontier Corporation.

So it's an experience for us in terms of trying these CEC mechanisms and knowing that it's really not going to get us anywhere, except for the fact that it has broad public attention, it has broad government embarrassment on both sides of the border, and it has become a good PR tool, but that's the way it is.

**SENATOR HAYDEN:** Can you clarify for me, my question, who appoints these people?

**MR. LUNA:** Dr. Ganster was right. In terms of the actual council members, the council members are comprised of the ministers of the environment.

**SENATOR HAYDEN:** Right. But they don't attend. Who do they appoint?

**MR. LUNA:** They--

**SENATOR HAYDEN:** For instance, on the Methanex case, the U.S. government appointed Warren Christopher. What kind of people are appointed?

**MR. LUNA:** In terms of how the CEC operates is like this. They're comprised with a council, which are the three heads of the environmental programs. Underneath the council is the secretariat, which is also an independent body. It's not representative of either country, but it's the staff that basically operates for the CEC. So every time the CEC as the council meet, the secretariat basically does all the analyses and all the work and all the background.

**SENATOR HAYDEN:** So it would be like none of the senators being here today. The staff would take the testimony. They're hired as pleasure appointees. They would write the conclusions and get us to sign the report.

**MR. LUNA:** More or less. But that is different--

**SENATOR HAYDEN:** Do you see a problem for representative government in that approach though?

**MR. LUNA:** Absolutely.

**SENATOR HAYDEN:** Could the head of the United States EPA appoint the head of the California EPA to represent the United States in a matter affecting Tijuana and San Diego?

**MR. LUNA:** I don't believe so, no.

**SENATOR HAYDEN:** Could they appoint a California environmentalist? An air pollution expert? A public health official with knowledge of the effects of lead?

Are they bound by the implementing legislation to just appoint their staff?

**MR. LUNA:** To be quite honest, I don't know the intricacies of the hiring process of the actual staff. And that is different from what Ms. Saldaña will address in terms of how they select people from the BECC, which is the other branch of these side agreements.

What I can tell you, I think, is once the director of the secretariat is named, that person has exclusive power to hire their own staff, as if it was a regular agency. And I don't believe that there's any congressional or any government decision-making in that process.

**SENATOR HAYDEN:** But I assume there's a real record kept with cross-examination and appeals?

**MR. LUNA:** In terms of the actual submission process?

**SENATOR HAYDEN:** Yeah.

**MR. LUNA:** No. Well--

**SENATOR HAYDEN:** So you could just submit an argument and your work is complete.

**MR. LUNA:** Yeah, and I will be happy to describe the actual mechanics of the submission per se, but plain and simple, it's really close to what has been described in terms of the Chapter 11 mechanism where the submitters, in essence, are kept out of the loop in terms of the process. And I'll give you an example.

When we filed the petition, we claimed extradition. Mexico had an opportunity to respond, and they did. But in their response, and based on relevant side agreement language, they basically told us, *Here's our response but it's going to be confidential*. That means the submitters can't see it, any country can't see it, but only the secretariat who's going to work with that submission. That, in essence, took us away from the dispute resolution mechanism. I have never seen any dispute resolution

mechanism where parties to a dispute are kept out of the loop, and to this point we have never seen what Mexico responded as a result of our complaint.

**SENATOR HAYDEN:** And if you have a opinion, what's the rationale for the secrecy? Because it seems unheard of in terms of this country's procedures.

**MR. LUNA:** It was not properly articulated. They were basically saying that because the case was pending a criminal prosecution, which is true, they could not really send any information. But the petition as a whole only dealt with one issue dealing with the criminal prosecution. So we basically said, *Okay, you have the right to not tell us the one point we raised about extradition but tell us about the rest. Why haven't you followed the law according to the other points that we raised?* And to this point they haven't responded to us.

**SENATOR HAYDEN:** Okay.

**MR. LUNA:** I'm only going to briefly describe what the BECC has done, and by the way, Diane Takvorian, our executive director to Environmental Health Coalition, also serves as an advisory committee member to the BECC.

But the only comment that I can tell you about this, without repeating what Dr. Ganster said, is that the BECC serves to certify projects for loans in their overwhelming majority of the cases. So, although they're striving to do some of the work necessary for infrastructure that is badly needed along the border, it's very clear that it's a very limited institution. Because they're not going to fund to clean Metales, and they're not going to fund to clean any other -- at least at this point -- any other issue related to an environmental crisis because their present guidelines only authorize them to look into water and sewage infrastructure projects.

So, in essence, these institutions have only a very limited purpose that is not descriptive, or it's not reassuring that it's really going to help us solve the entire complex border Tijuana-Baja California environmental problems.

**SENATOR HAYDEN:** And once again, not to take the time, just maybe a yes or no, first they decide whether or not you deserve to have a factual record kept, prepared. Is that right?

**MR. LUNA:** Yes.

**SENATOR HAYDEN:** So they don't have to do that.

**MR. LUNA:** No.

**SENATOR HAYDEN:** And if they decide to make a factual record without an open process, and then they issue their factual record, what can the complaining party do with it? Hold a press conference? Can you go into a court of law and say, “Look, this body prepared a factual record,” or would the courts say, “Well, it’s not factual from our point of view. We have to reopen the facts and start all over again because there’s no record kept, and we have no access to who the witnesses were,” etc.?

What does it do for you, effectual record?

**MR. LUNA:** In essence, only--

**SENATOR HAYDEN:** Does it empower you to go to the next box on the checkerboard?

**MR. LUNA:** There’s no next box on the checkerboard.

**SENATOR HAYDEN:** All right, thank you. That’s it. That’s the answer. All right, next.

**MR. LUNA:** It’s a very limited process. It’s very complicated, and you really have to have a lot of sophistication and legal knowledge.

**SENATOR HAYDEN:** Really gives you a lot of motivation to do it, I’m sure.

**MR. LUNA:** Right, right. But again, that’s all we have at this point. And again, we are coming from the perspective that we’re not only critics of the mechanics, we’re trying to make it work. And by us following this petition submission, it’s taught us some of the greatest obstacles, but it’s also giving us the power to say, “This is not working, and you really need to change it, and I’ll give you all these reasons as to why it’s not working.”

Now, to finalize, what can the California Legislature do? I think I will repeat some of the comments made earlier by Dr. Stumberg’s propositions, and that is, use your power as the State of California, because we believe as people from California, you hold great power. And if you go to Washington, D.C. and you are able to articulate some of these bad consequences of trade, they’ll pay attention. We’re very sure of that. Because as local nonprofit organizations, we’ve been able to make great strides through this submission process, and people are listening to us. I don’t see why they won’t listen to you.

You can also use your legislative power to create laws that will preclude polluters from coming to California to shield their liability. We have this great obstacle

called forum non conveniens that we face in courts every time there's a claim in Mexico. There is an issue of sovereignty but there's also an issue of fairness and justice. And if there's enough minimum contacts in California, where the company's based in California, where it's profiting in California, we should also be able to seek reliefs in California courts. And right now that is not possible, but the Legislature can work in terms of creating law that will permit plaintiffs to commence lawsuits in California.

**SENATOR MOUNTJOY:** Are you saying we could take action in a California court for something that occurred in Mexico?

**MR. LUNA:** No. But you may be able to tell the judiciary, or the courts, that they are not obligated to turn away cases only because they're coming from Tijuana. That is called the theory of forum non conveniens.

So if they choose to, and if they can demonstrate that there is sufficient minimum contacts to obtain jurisdiction, forum non conveniens then becomes discretionary on the courts. Then they generally say, *Well, I don't want to put up with this case. It's too complicated and it's in Mexico, and they have the better courts*, when, in reality, they don't have the better courts, there's really poor access to the judicial system, and there's really no relief.

**SENATOR HAYDEN:** This is where it's a U.S. company that's polluted on the Mexican side, sees trouble, abandons its operation, reestablishes its presence on the U.S. side. You're saying we should look into whether there's jurisdiction for a complaint coming from California or from Mexico, or either?

**MR. LUNA:** Either.

**SENATOR HAYDEN:** Okay.

**MR. LUNA:** And the last recommendation is for you to continue to assess the effects of NAFTA and global trade and partner up with your other border states in order to get that political clout that was mentioned earlier. Because that's also an effective tool to articulate as to why we need to look into NAFTA and reconsider it.

Again, it is clear that the way that the border is continuing to increase in industrial activities, and the way that we have these institutions in place to address those issues, we're never going to catch up. We're never going to get there. And it's going to have to come to a time where U.S. legislatures, we're going to have to face the music and say, "Are we going to reconsider this free trade and look at the flaws, or are

we just going to let it go?” And the better you can articulate these stories, the more ammunition you will have to really create that wave of reasoning and start to really consider NAFTA as a fair trade and not just a free trade.

**SENATOR HAYDEN:** All right, very good. Thank you. I’m worried about the time. I don’t know if there are other questions?

The next witness is Lori Saldaña, who’s been referred to, and she has written testimony, which I’ve--

**MS. LORI SALDAÑA:** If you’ve had a chance to look through that, I don’t need to--

**SENATOR HAYDEN:** I’ve very much marked it up.

**MS. SALDAÑA:** Okay.

**SENATOR HAYDEN:** I think I would classify your testimony as defending and supporting NAFTA, this border environmental agreement, but saying that your underresourced.

**MS. SALDAÑA:** I think that’s a fair summary.

**SENATOR HAYDEN:** That’s the brief summary. So why don’t you elaborate on that, and then if members have questions, rather than just reading through the testimony.

**MS. SALDAÑA:** Well, for the benefit of the folks who haven’t read this, let me just say that we were established as part of the NAFTA agreement, and our primary priorities are to help border communities develop water supply, waste water treatment, and municipal solid waste disposal projects.

We do put quite a focus on sustainable development, and in fact, that makes us rather unique. Our certification process is the only one in Mexico or the United States that utilizes principles of sustainable development for certifying environmental infrastructure projects.

And so, we define that as conserving our social and economic development to emphasize the protection and sustainable use of resources. So we address current needs, but also, we keep in mind the future needs of the communities along the border.

**SENATOR HAYDEN:** Let me ask you again: Who appointed you?

**MS. SALDAÑA:** Sure. The advisory council members are appointed by the President. In Mexico, they’re appointed by the woman who chairs Semarnap, which is



sort of the equivalent of the USEPA. Under NAFTA, it was left up to them to determine who would make those appointments, and in the United States it was left up to the President. So it's an executive appointment.

**SENATOR HAYDEN:** And how does the President decide?

**MS. SALDAÑA:** We were vetted. Our names were brought to them through various agencies. I believe the EPA brought my name up. I worked with the EPA on border projects here in San Diego. I've chaired the Sierra Club here in San Diego. So they were aware of my activities and community organizing in environmental and conservation work.

**SENATOR HAYDEN:** All right.

**SENATOR MOUNTJOY:** What payroll are you on?

**MS. SALDAÑA:** I work for the San Diego Community College District. I'm an instructor.

**SENATOR MOUNTJOY:** Oh, so the NAFTA part is just a volunteer thing?

**MS. SALDAÑA:** Correct. I'm not paid for my participation on the BECC Advisory Council.

**SENATOR HAYDEN:** And is there a staff of this BECC?

**MS. SALDAÑA:** Yes, we have a staff.

**SENATOR HAYDEN:** And who chooses them?

**MS. SALDAÑA:** The staff are selected by the board of directors, I believe. It's through the same interview process. They are hired and go through an interview process.

**SENATOR HAYDEN:** So they're not selected by the U.S. federal government or the Mexican federal government?

**MS. SALDAÑA:** No, and the offices are housed in Mexico.

**SENATOR HAYDEN:** Okay. Go ahead.

**MS. SALDAÑA:** So, we certify projects along the border for communities, including San Diego and Tijuana, to help develop their waste water infrastructure and water supply and also solid waste disposal.

Here in San Diego, there's a water reclamation plant under construction that was funded with a \$17 million grant. You had asked earlier about the NADBank loans. I believe you already have a copy of our report, our financial statement. You'll see that very few of these projects are being financed by the NADBank loan program.

In fact, the EPA has set up something called the Border Environmental Infrastructure Fund, and that provides grants to communities--

**SENATOR HAYDEN:** Who set that up?

**MS. SALDAÑA:** The United States Environmental Protection Agency.

**SENATOR HAYDEN:** On the seven projects in California, did you submit for us what they are? Are those like waste water treatment projects?

**MS. SALDAÑA:** Correct.

**SENATOR HAYDEN:** Brawley, Heber, San Diego, Calexico, Westmorland.

**MS. SALDAÑA:** Brawley is a water treatment plant, so drinking water. San Diego has a water reclamation facility that receives some funding assistance. Heber, Westmorland, Brawley had money for waste water. Heber also had some for water, drinking water.

**SENATOR HAYDEN:** And the source of this money is--?

**MS. SALDAÑA:** Well, it's a combination. I'm sorry, I thought you had a copy of this report.

**SENATOR HAYDEN:** Does the state contribute?

**MS. SALDAÑA:** The state, and sometimes it will, yes. If it's in a rural area -- for example, an agricultural area -- which is part of our irrigation district, then they might qualify for state funds as well as federal funds.

**SENATOR HAYDEN:** All right. But the decision is made by the BECC. To certify.

**MS. SALDAÑA:** Yes, to certify the project. And we take into account -- we have a comprehensive public participation process. We ask members of the community for feedback.

**SENATOR HAYDEN:** But that's purely advisory, is it not?

**MS. SALDAÑA:** No, that is required. We have to hold public hearings.

**SENATOR HAYDEN:** Right. If you hold a hearing, you've discharged your responsibility.

**MS. SALDAÑA:** That's part of the responsibility. We have to meet certain sustainability criteria as well.

In other words, what we've done -- and now, remember, this is on both sides of the border. Here in the United States, we often take for granted we will have an environmental review process. In the state we have an environmental impact study --

or, I'm sorry, an environmental impact review, and on the federal level we have an environmental impact study. For the first time now, border communities have a chance in Mexico to have that same type of review process: to attend hearings, to make comments, to make suggestions, and to testify and let the commission know if something does not look like it will benefit their community in the way they like.

This is really a breakthrough. I can't emphasize that enough. This is the first time that citizens of Mexico have had a chance to basically petition to an agency and make changes to a project and not simply accept a project that has been predetermined in Mexico City.

**SENATOR HAYDEN:** I'm sorry to rain on this parade if it sounds that way. I'm just trying to clarify because some people in this room, and certainly many of us, for decades have attended meetings and become the victims, or subjects, or objects of public participation. And agencies have to do it. At least my constituents are sick of it.

**MS. SALDAÑA:** Of the hearings.

**SENATOR HAYDEN:** Well, no, of participating and advocating and writing testimony, but you really can't then do anything. There isn't a next square.

**MS. SALDAÑA:** Well no, there is.

**SENATOR HAYDEN:** You can make a decision and claim that something is sustainable development, but from a U.S. legal standpoint it's meaningless.

**MS. SALDAÑA:** They have to qualify under the EPA as well. If the project takes place in the United States, there's still the National Environmental Policy Act review process.

**SENATOR HAYDEN:** Okay, so the existing environmental laws would come into play?

**MS. SALDAÑA:** Correct.

**SENATOR HAYDEN:** On this side?

**MS. SALDAÑA:** Correct. So if there's a project taking place in Mexico along the border, there would be a review process taking place in the United States as well. We recognize, as César pointed out, that environmental impacts are cross-border.

**SENATOR HAYDEN:** But would California CEQA apply?

**MS. SALDAÑA:** Generally, it's NEPA, because these are federal projects.

**SENATOR HAYDEN:** Right, but those are -- I mean, CEQA has some teeth left. NEPA, you just have to certify that you've done a review.

**MS. SALDAÑA:** That you've done an evaluation of all possible--

**SENATOR HAYDEN:** Yeah.

**MS. SALDAÑA:** Correct -- alternatives.

**SENATOR HAYDEN:** With CEQA you're required to mitigate adverse effects or do an overriding declaration saying that the benefits are so great the damage to the environment should be set aside, and if people disagree, they go to court.

**MS. SALDAÑA:** Are you talking about CEQA or NEPA, or both?

**SENATOR HAYDEN:** CEQA. We're California legislators. The NEPA, I don't know what it is. It just doesn't happen.

**MS. SALDAÑA:** Well, no; in fact, I've been through that process as a plaintiff on a NEPA case and it is very similar. Basically, you go through the draft, you go through the final. If you're not pleased with the final, you make your case. If they issue a record of decision and proceed in any case, despite your objections, then the next step would be to file a lawsuit and work out a settlement.

**SENATOR HAYDEN:** They don't have the same requirements that CEQA does.

**MS. SALDAÑA:** In many cases there are overlaps.

**SENATOR HAYDEN:** No. The California Environmental Quality Act is stronger than NEPA. There's been a fight for thirty years over -- from the federal or some points of view -- how to get the federal law to preempt the state law, and the arguments are well known.

I'm just trying to establish that CEQA doesn't apply in this process.

**MS. SALDAÑA:** As long as the funding is coming from a federal government, these are not state projects.

**SENATOR HAYDEN:** Right.

**MS. SALDAÑA:** In cases where there is some state funding, then I would think that the CEQA would be brought into play as well.

**SENATOR HAYDEN:** All right, maybe we can check that. Because we had testimony from EPA and Secretary Nichols and didn't get that impression. What they testified was there's been, since NAFTA, a lot more hubbub of activity by state officials and groups, but that there'd been no real change in terms of who makes the decisions,

who calls the shots, and that they'd never been consulted by the California Trade and Commerce Agency with respect to anything going on, on the border.

**MS. SALDAÑA:** I know that there is a CalBECC that's part of the state EPA. I know that they do have meetings here periodically, and we discuss things like air quality and the development in Mexico of standards for vehicles, and that is in development stages.

**SENATOR HAYDEN:** Okay.

**MS. SALDAÑA:** Let me just say I'm not speaking sort of theoretically of this. I have a home in Ensenada as well as here in San Diego. I know the challenges that we face, and I've also seen tremendous improvements in the last six years in Mexico.

**SENATOR HAYDEN:** In the environment?

**MS. SALDAÑA:** In some cases, yes. And that's the result in maquiladoras of managers simply stepping in and saying, *We're not going to let our workers continue to operate under these conditions*, because these are managers that are not coming from Mexico. They're coming from all over the world now. And they're holding Mexico to a higher quality in their operations. So I'm not going to put a blanket statement and say every maquiladora is good, every maquiladora is bad. But what we are seeing is tremendous change along the border, and I'd invite you to take a tour and see that firsthand, if you have any opportunity to do so. There are terrible examples and there are some very good ones.

**SENATOR HAYDEN:** Done it.

All right, go ahead.

**MS. SALDAÑA:** I'm not sure where I left off here.

I talked about the projects that have been certified in California, and the total estimated costs for these are approximately \$161 million. And again, that's been a combination of both federal and state funds. And again, the EPA has funded many of these with their Border Environmental Infrastructure Fund Grants Program.

Five projects have been certified in Baja California: two in Tijuana, and also in Ensenada, Mexicali, and Tecate. And again, those are a variety of solid waste disposal projects, water and waste water.

We also provide technical assistance, and what we're finding is that many of the smaller communities don't have the resources to plan and design environmental infrastructure projects. And so, the USEPA has provided a total of \$22½ million in

grants for this technical assistance program to help those communities develop the resources they need to do their own planning.

And in fact, I believe we do have a very strong working relationship with members of the State of California: Kristen Aliotti, here in San Diego; I mentioned already the California EPA; and I know that we take part in various meetings and hearings, and we are trying to work with the state as much as possible on these cross-border issues. And also, Mr. Pete Silva, who was just appointed to the State Water Resources Board. He's a former deputy manager of the BECC as well. So there are a lot of relationships between these agencies in the State of California.

So in summary, NAFTA has benefited the border region by establishing the BECC and NADBank to address the mounting environmental infrastructure deficits facing the border region. It's been good for trade. It sparked a great deal of economic development opportunities, and I will also say, of course, challenges, and there are initiatives and ventures that will address the very important issues of job retention and development, job creation and higher wages. I think that's something that we need to see happen in Mexico. Right now there's a great attraction because of low wages, but again, I see a change in that.

Our pace and our resources, unfortunately we do need more assistance from Washington. And again, as César pointed out, that's something that I think the State of California could put some pressure on our delegation in Washington and insist that we be funded to carry out our mandate and provide the type of infrastructure support that's needed along the border.

In Tijuana alone, it's estimated that there are perhaps as much as 25 percent of the households that don't have adequate sewage connection systems, and these renegade sewage flows do come across the border and pollute the river that comes into San Diego and into a national estuary, the Tijuana Estuary Reserve.

So the more the State of California can work to provide funding to help us do the projects we need, the better we'll be able to carry out our mission and help solve these environmental problems along the border.

**SENATOR HAYDEN:** All right, very good.

As I remember the debate over NAFTA, there was a wrenching argument in the environmental community. Was National Sierra Club against? As I understand, it was.

**MS. SALDAÑA:** I believe we tried to work on the side agreements, the National Resources Defense Council, some other groups--

**SENATOR HAYDEN:** NRDC was in favor of NAFTA.

**MS. SALDAÑA:** Correct. And Sierra Club decided in the end not to go along with them.

**SENATOR HAYDEN:** Sierra Club was against.

**MS. SALDAÑA:** Correct.

**SENATOR HAYDEN:** At that time you were with the Sierra Club--

**MS. SALDAÑA:** Yes.

**SENATOR HAYDEN:** --but in favor of the agreement or--?

**MS. SALDAÑA:** I was opposed for the environmental reasons that were brought forth, and basically that not enough funding is going into protecting the environment while tremendous pressure is being put on our infrastructure and our natural resources.

**SENATOR HAYDEN:** And since then, you've cited some positive developments that sound almost like the increased attention and the increased participation on the Mexican side and these mechanisms that bring people to the table are improvements, as well as some of the funding and some of the projects.

**MS. SALDAÑA:** The public participation process, I think that's a very significant breakthrough for Mexico.

**SENATOR HAYDEN:** Even though it's advisory.

**MS. SALDAÑA:** Well, we only have advisory power here as citizens of the United States.

**SENATOR HAYDEN:** Right.

But your conclusion could be read more pessimistically. I want to read it back to you, and just tell me if this is where you want to leave your testimony.

This is you:

"Unfortunately, as more projects enter BECC's pipeline, it doesn't necessarily mean we're making any progress." And I repeat that: "It doesn't necessarily mean we're making any progress." This is six years on. "The population growth factor alone can answer for that," which, of course, is stimulated by NAFTA increasing industry in the border region.

“Sadly,” you say, “the hope for any meaningful, sustainable, and steady progress NAFTA has accomplished through BECC is in real trouble, let alone catch up to the needs. BECC’s pace, unfortunately, has not been met by its funding appropriations.”

Having said that, do you have reason to believe that the funding and the resources necessary to catch up with the increasing problem due to NAFTA will be any different in the next five years than in the first five when the pressure was really on President Clinton to deliver?

**MS. SALDAÑA:** Well, I think the first five years of NAFTA were marked by the most serious economic crisis in Mexico in recent history. So the last five years has been a bit of an anomaly. I think that both countries are going into the next five years in a much better economic position.

So I would say that we have a better potential to solve some of these problems, but what we need to see is what happens in the next election, what happens in our administration. We already know what’s happening in Mexico in terms of their administration, and I think that we could see more emphasis on trade, just by the nature of who’s going to be taking the office of the presidency in Mexico.

What is affecting the border is not just NAFTA. It’s globalization. We talk about NAFTA but, in fact, what we’re seeing are companies from all over the world coming to this area because Mexico has liberalized its trade policies with many other trading partners.

So, I don’t have an answer about U.S.-Mexico relations, but I’m saying we’re in a better economic position, both countries, than we were five years ago.

**SENATOR HAYDEN:** All right. Any other questions? Thanks very, very much.

Next, two witnesses on human rights, Raúl Ramírez and Roberto Martínez.

Patricia is going to provide the translation.

Mr. Ramirez is the ombudsperson for Human Rights for Baja California.

Welcome.

**MR. RAÚL RAMÍREZ:** [In English] Nice to meet you.

**SENATOR HAYDEN:** Bienvenidos.

In Español, what is ombudsperson? What is the Spanish word for ombudsman?

**MR. RAMÍREZ:** Ombudsman is the same.



**SENATOR HAYDEN:** All right.

**MR. RAMÍREZ:** Bueno. Voy a hablar en Español.

[Translated by Patricia Mayer.]

I thank you for the invitation, Guillermo and Senator. Thank you very much. I'm going to give you a brief description of the development of the human rights in Mexico and also on the border.

In 1990, Mexico has created the National Commission for Human Rights, and after that in every single state of the country, there is an organization similar to that created.

In my opinion, this effort to bring up human rights attention to Mexico is an effort of the former President Carlos Salinas to legitimize his election. This particular election has been challenged and it has lots of suspicion.

Another objective of the President was to prepare the stage for the negotiations for NAFTA at that time. In 1994, the same date of the NAFTA takes place, enters into effect, that same day appears publicly the Zapatista Army of National Liberation is \_\_\_\_\_ and questions openly the principles of NAFTA. They say that the Zapatista Movement exposes Mexico to the world in disadvantage with powerful partners. Exposes Mexico as a poor country, underdeveloped, and in serious disadvantage to compete.

The intention then is obvious that the attempt is to just take advantage of the natural resources of Mexico and the cheap labor. Because of this, the human and social rights are denied and these are the same rights that have been supported by the United Nations Declaration of Human Rights.

There's another change in 1994 of the border town, the border in Mexico, and is a change in the policy of immigration in the United States. We're talking about the Proposition 187. And in October 1994, the Gatekeeper operation enters into effect.

In 1996, we find that there's a lot of changes in the legislation of immigration to the United States, and as a result of that, the migration of workers is criminalized. Undocumented workers.

[Mr. Ramirez, in English] Not illegal. This is not the word.

**SENATOR MOUNTJOY:** How did that change? When did that--?

**MR. RAMÍREZ:** [Translation resumes.] It has legalized the concept of the undocumented workers being criminals.

**SENATOR MOUNTJOY:** But it has always been in our Constitution that illegal entry into the United States, the same as illegal entry into Mexico, is criminalized. It's been that way forever. It hasn't changed in recent history.

**MR. RAMÍREZ:** Now the law is more severe because now they penalize with a felony a person who enters the country several times of the claims of false nationality. It's retroactive. And now it is retroactive for those -- and this applies to those that in the past have committed a crime, and it penalizes them.

**SENATOR MOUNTJOY:** But that hasn't changed. The only change in that was when we did the amnesty in 1986 and we penalized under that amnesty. We penalized employers that would hire those that are illegally in the country. And that still exists today. That hasn't changed since 1986.

**MR. RAMÍREZ:** It's my understanding that the gravity of the crime has increased and now is considered a felony when it was before it wasn't a felony.

[Inaudible discussion]

**SENATOR HAYDEN:** We can clarify this.

**SENATOR MOUNTJOY:** If what he's talking about is that the receipt or use of identification, i.e. driver's license, social security, etc., that has been increased in penalty.

**MR. RAMÍREZ:** Yes.

**SENATOR MOUNTJOY:** Okay. Just so we understand.

**SENATOR HAYDEN:** Correct, correct.

**MR. RAMÍREZ:** I'm going to explain a little bit about the situation in Tijuana. Right now, Tijuana's proud to be the place where there is seven million TV monitors that are manufactured and exported from them. There is an employment rate of .5 percent. Nevertheless, Tijuana is the second city of the greatest growth in Mexico, with a gap between salaries in the United States and Tijuana that is phenomenal. In Mexico, in the maquiladora industry, the worker earns 38 cents to 50 cents an hour. It is my understanding that in the United States the minimum salary is 5.25 an hour and California it's 5.75. This gap in salary is what encourages workers in Mexico to come across the border and work in the United States.

**SENATOR MOUNTJOY:** But that goes back to the same argument that they're unable to unionize. I mean, so long as under NAFTA they're unable to unionize except for those unions that are controlled by the employer, it's going to remain, right?

**MR. RAMÍREZ:** That's one of the reasons. In essence, my opinion is that there is not only violation to the labor rights of workers but also their social rights.

What happened in this discussion, in the frame of this discussion about NAFTA, we realized that under the three countries, the privilege go to the commerce, to the industries, to the owners of the companies, and not to the rights of the workers.

Just one example: As an example, last year in Tijuana there was a conference, the 17th Conference of Border State Governors. Only 5.8 percent of the people attending this conference considered that migration was a topic that was high priority. At the same conference, the governor from Arizona and Governor Gray Davis were in favor of inviting the guest worker movement, or the new *brasero* thing. [*Interpreter: I mean*] they are promoting that they are in favor of that.

**SENATOR MOUNTJOY:** Yes, that would be a green card; that would be a government-approved green card guest worker type card, right? That would be the old *brasero* program.

**MR. RAMÍREZ:** Sí.

They were in favor of this guest worker movement but also with a control border. And that is what is so important strategically that they have control measurements like the Gatekeeper. And it's my understanding that this Gatekeeper operation was signed by the Pentagon under the Department of -- [*Interpreter: something about low intensity word*].

I understand that the Gatekeeper operation, it's a mechanism of control, not necessarily to stop immigration but just to control it and make invisible the process of immigration -- the migration. We believe that the Gatekeeper operation has an objective to remove the eyesore of effects of the crossing of the border and make it kind of an invisible -- sanitize it.

We believe that the solutions to this phenomenal should be a bilateral solution, the two countries, based on historical, cultural, social perspective. Not from the perspective of police or legal perspective like we're doing it right now.

**SENATOR MOUNTJOY:** Well, wouldn't that have to be a two-way street? I mean, wouldn't the flow be the same both directions? I know in Mexico today there's a heavy financial penalty for visiting even in Baja.

**MS. MAYER:** For visiting?

**SENATOR MOUNTJOY:** If you visit by air, yeah.

**MR. RAMÍREZ:** I agree with you. We should start a new dialogue between the two countries on this respect. Right now we have a dialogue of deaf people. Our politicians stuck in one direction and is lost, and then your politicians stuck in one other direction and is lost, and we are not talking to each other, and people are dying on the border constantly.

We need to have a dialogue that is profound and sensitive to the historical roots of the two nations. Because it's a fact that the United States needs the labor of the migrant workers to sustain some of the labor needs because some of the workers in the United States do not do those jobs.

My opinion is that in order to stimulate the development of Mexico, there's another way to control the migration to the United States. We should establish a system of compensatory fees, something similar to what happened in Europe with Spain, Portugal, and Greece. Something like a martial plan. Not like right now, that the social development of Mexico is being stimulated exclusively from a philanthropy point of view that doesn't really stimulate the real development of Mexico.

In my opinion, the American people should have a little bit more understanding of this process. I was very amazed that in the Millenium Summit in New York the American press was more interested in the people that die with the Firestone tires than the millions and millions of people that die everyday out of hunger in the world -- 1.2 billion of poor people in the world.

I believe in the visibility [*Interpreter: I don't know if that's a word*] of the human rights. I don't believe that there can be any democracy in Mexico. There's not labor rights. And if there is no civil rights, there cannot be any democracy in Mexico. If we don't have social rights in Mexico, we cannot talk about democracy either.

**SENATOR MOUNTJOY:** But the real question is, then, what role would the United States play in creating these types of rights in Mexico? What kind of leverage would we have?

**MR. RAMÍREZ:** I think it is a very important role because the United States and Mexico are \_\_\_\_\_. Whether we like it or not, we are united.

**SENATOR MOUNTJOY:** No, no, not like it or not, but today, what pressure can the United States put on Mexico to change their civil rights or human rights, or whatever you want to call it?

**MR. RAMÍREZ:** I think we should start out dialogue of equals, starting with the migrant workers. When I talk about a dialogue of equals, I say that in order for Mexico to work on the civil rights, we need to have development of equality in Mexico because we are now competing with two very powerful countries and we are not seated at the table as equals. But we should start by dealing with the issues of the migrant workers that are already in the United States.

**SENATOR MOUNTJOY:** How does the U.S. treatment of migrant workers leverage anything with the Mexican government between their people and their government? I don't get the relationship.

**MR. RAMÍREZ:** I understand, and I understand that there are two sovereign countries, but nevertheless, we are united, so there is a relationship. So we have a commercial agreement, a treaty, between the two of us. This commercial trade treaty is influenced in the development of Mexico, and it's also influenced in the political rights and civil rights of Mexicanos. There is not a magic formula, I'm sure, to solve the problem, but we need to find a mechanism that helps us deal with the development in Mexico.

And I think this is a very important function of the United States because we are partners on this treaty.

**SENATOR MOUNTJOY:** Would he agree that the only real solution is to revisit NAFTA and write within the NAFTA agreement certain civil rights that would have to be afforded the people of Mexico in order to have -- I mean, a revisitation of the NAFTA agreement is what it would take, really.

**MR. RAMÍREZ:** Yes, [*Interpreter: he agrees with you*].

**SENATOR HAYDEN:** Does that complete the testimony?

**MS. MAYER:** He's finished and he excuses himself because he has to go.

**SENATOR HAYDEN:** Thank you.

**MR. RAMÍREZ:** [In English] Thank you very much.

**SENATOR HAYDEN:** I wanted to mention, there's a hearing by, I think, Assemblyman Firebaugh on these issues next month, the human rights issues. Is it here in San Diego? In San Diego. So this discussion will continue at another hearing of the California Legislature.

[translated]

My understanding of the human rights dimension, or issue, is this, that NAFTA and other economic forces, either they create or they don't stop the dislocation of campesinos, or small farmers, subsistence farmers, in places like Chiapas. They come to the cities. They head towards the border. And each year now there are three hundred, four hundred, five hundred people die trying to cross the border. And so, there is a human rights side effect of these trade and immigration issues. But, am I right, there's nothing in NAFTA that requires any monitoring or any addressing of these issues? And Senator Mountjoy is asking, wouldn't you have to change NAFTA to look at these issues?

**MR. RAMÍREZ:** I agree with you and I want to just add that one of the mistakes that NAFTA has is that it's a privilege for the maquiladora industry at the expense of exploitation of the worker because of the cheap labor and the importation of the opening of the doors to the big -- like the big stores, like chains. And that doesn't have a positive effect on the salary of the Mexican worker.

**SENATOR HAYDEN:** Okay, gracias. Y mas?

**MR. RAMÍREZ:** [In English] That's all. I'm sorry, I need to go.

**SENATOR HAYDEN:** Thank you.

Mr. Martínez, did you want to add anything?

**MR. ROBERTO MARTÍNEZ:** Yes.

**SENATOR HAYDEN:** You've submitted written testimony; if you could briefly summarize it.

**MR. MARTÍNEZ:** Yes, I just want to summarize what I had written.

**SENATOR HAYDEN:** Please.

**MR. MARTÍNEZ:** In the interest of time.

Briefly, earlier this week I talked to a migrant farm worker organizer from Oaxaca who said -- I asked him, you know, how was NAFTA affecting farm workers in Oaxaca, and he said, "Whole families are leaving." I could testify to that because I've been to San Quintin in Baja California where tens of thousands of migrant workers from southern Mexico migrate from Oaxaca, in southern Mexico, to San Quintin to work the fields there and then make their way north. These are the people we work with and service here in San Diego who come to our agricultural areas.

However, the U.S.-Mexico border for us as human rights activists has become a flash point, not only for globalization issues, including NAFTA and environmental

devastation, but also for human rights. We already heard reference to Operation Gatekeeper.

I think the horrible thing about Operation Gatekeeper is that now, after six years, which, as you heard, became effective in October of 1994, we are documenting 1,300 deaths a year throughout the whole U.S.-Mexico border of people crossing the border. In California alone, we've documented now 600 deaths, including 115 this year. In some years, like '95 and '96, we documented 145 a year. And these are the people that some people agree have been displaced by NAFTA who are coming north from the poorer states of Mexico and who join the thousands who come to the border.

We're very concerned about the increase in militarization--

**SENATOR MOUNTJOY:** What do you mean they've been displaced by NAFTA?

**MR. MARTÍNEZ:** Well, some of these workers tell me that they can't compete with the prices of the market down in Mexico, the produce that's been flooding the markets in Mexico, southern Mexico.

**SENATOR MOUNTJOY:** So in other words, produce coming into Mexico, i.e. corn, for one crop, that's the corn coming in from other countries?

**MR. MARTÍNEZ:** Right. Their staples are being, you know?

**SENATOR MOUNTJOY:** Okay. And so then, that makes it nonprofitable for--

**MR. MARTÍNEZ:** Right. Plus what they have to invest in their own development for their own land.

**SENATOR HAYDEN:** Then they head north.

**MR. MARTÍNEZ:** Yes, and they're heading north. So again, we're also concerned about the increase in human rights abuses by federal agents, the lack of accountability. We have written letters to Attorney General Reno and INS Commissioner Meissner, recommending that they suspend Operation Gatekeeper and the other operations and weigh the human cost of these operations against what they're trying to accomplish. As you've already heard, these operations are not succeeding in reducing illegal immigration. They can only control it.

But the worst part of it is, they're pushing the people into areas of extreme cold in the winters and snow and extreme heat in the deserts of Imperial Valley and now Arizona. Operation Gatekeeper has now pushed people into Arizona where their numbers are increasing almost to the level ours are per year.

We believe that if this committee here had any kind of influence in convincing INS and U.S. Attorney that these operations are not a success at all.

**SENATOR MOUNTJOY:** What are you recommending? Just an open border?

**MR. MARTÍNEZ:** Absolutely not. I mean, every country has the right to control its borders, but let's look at the figures here.

Prior to October of 1994, we documented maybe 23 deaths a year, total, in California. Now we're documenting up to 150 a year. I mean, that tells you that these operations are not successful. They need to reevaluate what they're trying to accomplish with these operations. I think they're just more of a political reaction than they are to try to solve the immigration problem.

**SENATOR HAYDEN:** You said 23 deaths per year in California?

**MR. MARTÍNEZ:** Prior to October of 1994.

**SENATOR HAYDEN:** Prior to October '94, and now you're getting 100 a month?

**MR. MARTÍNEZ:** Hundred forty-five to 150 a year.

**SENATOR HAYDEN:** A year.

**MR. MARTÍNEZ:** A year.

**SENATOR MOUNTJOY:** Right, but the percentage of people coming north -- so you may have more numbers, but if there's more numbers coming north, there naturally would be more numbers, then, losing their lives, trying to come north. So, I mean, the percentage, there's a percentage increase of those that are coming.

**MR. MARTÍNEZ:** Well, the numbers are never going to change of the people crossing the border. We're just saying that the numbers of deaths are going to increase. We have, what, something like 8,000 border patrol agents on any given time on the border? If they can't control it without these operations, then, you know?

**SENATOR MOUNTJOY:** No, my point was this: There are more people coming north, so naturally there would be more chance of death if they tried to cross. So as the percentage of people go up that's coming, the percentage of those that would risk their life is going up also. So it's sort of a percentage deal rather than a number deal. Right?

**MR. MARTÍNEZ:** I don't know about that. See, what these operations have done is cut off the traditional crossing areas, like here in San Ysidro, for instance, where they could actually--



**SENATOR MOUNTJOY:** Illegal crossing areas.

**MR. MARTÍNEZ:** Yeah. Regardless of whether it's illegal or legal, at least they weren't getting killed crossing the border and being pushed into these mountains and deserts. I think if they tried a different strategy using border patrol agents, they could control it without forcing them across into these mountains and deserts. That's all we're trying to say. We're not trying to say open the borders. We're just trying to say, utilize or implement a more humane approach to controlling illegal immigration. That's all we're trying to say.

**SENATOR MOUNTJOY:** What you're trying to say is leave the leaks in a nice place. A more friendly place.

**MR. MARTÍNEZ:** Prior to Operation Gatekeeper, they were controlling the border. I mean, why employ these kind of strategies that deliberately force people into -- by their own admission, INS -- into these open areas where they're going to find themselves in the mountains or the snow? All we're saying is regroup, reevaluate. Let's see if they can find a more humane approach to controlling the border.

**SENATOR HAYDEN:** All right. Did somebody have figures documenting what the increased immigration flow is since NAFTA?

**MR. MARTÍNEZ:** Yeah.

**SENATOR HAYDEN:** How do you estimate that?

**MR. MARTÍNEZ:** The increased flow?

**SENATOR HAYDEN:** Yeah. Let's say NAFTA's displaced larger numbers of people. They're coming to the border. Can you put numbers around that? Or is it just impossible?

**MR. MARTÍNEZ:** It's impossible to know because we've got -- I mean, the whole 2,000 mile border, people crossing to Texas, Arizona, and California, we see the increase in our agricultural areas, we see the increase in the number of apprehensions. INS claims that Operation Gatekeeper is a success, for instance, because apprehensions are down in one area and up in another area.

**SENATOR HAYDEN:** But if it was 23 and now it's 150 on the California border, that doesn't mean that now we have ten times the number of immigrants coming. You're testifying, I guess, that the Operation Gatekeeper has succeeded in creating physical obstacles and military obstacles in certain places that used to be easy

crossings, but they haven't stopped the desire or the need to cross. It's just moved people into terrain which is more harsh and therefore you have increased fatalities.

**MR. MARTÍNEZ:** That's correct.

**SENATOR HAYDEN:** Thank you very much for your testimony.

**MR. MARTÍNEZ:** You're welcome.

**SENATOR HAYDEN:** I guess that would be collateral damage, in the current militarized jargon of economic development.

There's three more witnesses, and I'm putting some pressure on them. I'm just worried about the time because I have to leave at 3:30.

There's Gina Mandy from the California Trade and Commerce Agency. There's Dr. Hinojosa-Ojeda from UCLA. And I believe there's a representative or the head of the County Labor Federation here. So that'll conclude it.

Now, we're on this issue, Raúl, that we started talking about whatever the economic implications are, what is the role of local government, state government in the NAFTA mechanisms? We keep moving back and forth between whether NAFTA's good, and if so, for who; and if it's bad, who loses? And then we switch over to do we have any say in it?

I just want to catch you up that the dialogue keeps floating, and your testimony, and I've read it and it is way over my head, so you must be a very esteemed economist, but your testimony is mainly about how to get an accurate reading on the economic effects, and it's very interesting testimony. If you have anything to add on the other subject about representation, we'd like to hear it.

I'm trying to figure out who should testify in what order, and since we're on the economic issues, I think I'd like to hear from you and our labor friend and then go to Trade and Commerce to respond and just wrap it up conversationally, if I might, then on the issue from the economy to the politics of it.

Does that make sense?

All right. Well, then, why don't you pick up the conversation where we are, as you've heard it. Introduce yourself. And the Trade and Commerce rep can talk about their claim that NAFTA's good and their arguments for why it's good. But then we have to shift into what's the Legislature's relationship to the Governor? The Governor's vetoed our bills. What do you see ahead as we come back to try to carve out a role for the Legislature in the process?

Go ahead.

**DR. RAÚL HINOJOSA-OJEDA:** Thank you, Senator Hayden, distinguished panel. It's a pleasure to be here to rush down the freeway to get here in time. I was actually hosting a meeting this morning.

**SENATOR HAYDEN:** Is NAFTA the cause of the traffic congestion as well?

**DR. HINOJOSA-OJEDA:** Apparently NAFTA's the cause of everything. Before NAFTA there was nothing, actually.

And actually, that's exactly where I want to make my point, because I've been studying U.S.-Mexico integration for over twenty years. I'm a product of U.S.-Mexico integration, in fact. And the reality of it is we have a human tragedy in North American economic integration that far precedes NAFTA. In fact, if you look at the last fifty years of North American economic integration compared to Europe, there's a very fascinating fact. Spain and northern Europe had essentially the same per capita income gap that Mexico and the United States had fifty years ago. Essentially about a ten to one income gap. Fifty years later, the income gap between the United States and Mexico is exactly ten to one. Whereas, in the case of Spain, now with the case of the European Union, that gap has narrowed to less than about three to one.

Now, why did that happen? Why do we continue to be doing the wrong things in North America? I think that there's a number of issues, frankly, and having been a very early critic of free trade, who have spent ten years actually looking at the numbers, the hunt for large numbers, that large sucking sound, I must tell you that the debate is misplaced if we talk about NAFTA per se.

The issue is really a much broader question of how we have failed in North America to set long-term goals of what we want to achieve in terms of closing income gaps, which was done in the Treaty of Rome in the case of Europe in 1957, and place the type of mechanisms that were really necessary to close those gaps.

Trade liberalization, the lowering of the relatively small tariffs which existed in North America, even in the case of corn, which I extensively researched, and its potential impact on outmigration, which I can talk about, was actually going to have a relatively small effect, positive or negative. Neither the business side, and maybe we'll hear both people -- one talk about how great it is, the other talk about how terrible it is -- it's not the issue. The NAFTA liberalizations are not the issue.

In the case of Europe, what really made the difference -- and somebody made a point about this -- is that particularly with the introduction of the poorer countries -- Spain, Portugal, Greece, including Ireland, by the way -- into the Common Market in 1974, there was the creation of the European Regional Development Funds, the European Social Funds. These funds is what has been significant change in these countries. Spain and Portugal used to be large outmigration sending regions to northern Europe. Today, both countries are strong immigration importing countries.

Why?

We just did a counterfactual exercise that we're presenting at a conference in December, that if Mexico had had a border with Europe instead of the United States, and it was brought into the European Common Market, what would have been the impact?

Well, it turns out that the formula is, that for any region that has under 75 percent of the per capita income of Europe, they essentially get about \$1,000 per capita as grants. As grants to do what? To build schools, to build clinics, to build communications infrastructure, to build small business enterprise development.

Do the math. It turns out to be \$100 billion if Mexico had had -- per year -- had had a border with Europe. That's on the per capita basis of what northern Europe has been spending for the southern European countries.

So, you know, we have to get serious in North America. When you come back from Brussels out here, you really feel you're back in the Wild, Wild West.

We do integration, you know, the old-fashioned way: Let it rip and see what happens. And that's where we have right now.

I must say that the blame has to really be put in both governments -- and state governments, by the way -- regional governments and national governments. If you really look at particularly the issue of human rights and labor rights, I would say, frankly, that we really have to talk about a plague on both of our houses, all right? If you think about the way in which for these last fifty years, we have essentially maintained a system of apartheid in the United States without recognizing it. We bring in labor right across the border, just like South Africa brought them in from the Bantustans and made sure that they were not going to have labor rights and human rights. And we have built an economy on that basis, all right?

And I would submit to you that in the United States, in the State of California, we have more violations of U.S. labor laws as a result of this practice than we have along the U.S.-Mexican border.

How many OSHA inspectors are there in Southern California?

**SENATOR HAYDEN:** That's a good question.

**SENATOR MOUNTJOY:** Too many.

**DR. HINOJOSA-OJEDA:** Excuse me. Actually, it's more like 56 for a labor force of close to 8 million.

**SENATOR MOUNTJOY:** But you're comparing--

**SENATOR HAYDEN:** Let the debate begin. Mr. Mountjoy.

**SENATOR MOUNTJOY:** Sure, okay. No, no. I mean, I can't sit here and hear him compare European policies, because how in the world can a trade agreement work between two countries that have totally different aspects on human rights, on labor laws, not even the ability to get a labor organization that isn't sanctioned by multinationals, get it off the ground? How do those people then come up as far as the wage earners or the living conditions? What's driving them across the border is the fact that they know they can come to the United States and get a better living condition.

But our labor unions here, our drivers, our unions, whatever, they're under a different law, paying higher wages. In Europe, those laws were more equal. So, it's just throwing more money into it and more infrastructure into it, and all of that doesn't do a thing unless the laws of human rights, ability to organize, all of those things are equal.

**DR. HINOJOSA-OJEDA:** By the way, Senator, I completely agree with you that we need to have an upgrading of labor rights on both sides of the border. I think that we have to think about it and that there are serious deficiencies. I completely agree with you.

**SENATOR MOUNTJOY:** But I'm not going to buy into your argument today that our migrant workers do not have representation in the United States, because they certainly do under the ALRB, if they're farm workers, if they are working in the construction industry. Let me tell you, it's a very heavy monitored situation as far as unions, etc. So I'm not going to buy into that totally. But, you have to have equal rights on each side of the border to make the economy equal.

**DR. HINOJOSA-OJEDA:** Well, let me suggest to you that if we go back and study history -- actually, what was happening in the mid-1970s in Europe was that there were authoritarian regimes in Greece, Portugal, Spain, that were actually coming down. And they had, by the way, fascist labor laws. That's where they were invented, in Franco, Spain.

**SENATOR HAYDEN:** What happened?

**DR. HINOJOSA-OJEDA:** It was on that basis, in fact, that they moved forward with a vision of cooperation with Spain of transformation in a whole series of political pacts, but with a clear vision that this was going to be an investment for the future of Europe.

I think that we should go back and not think about this as throwing money after bad, as I think the term that you used, but as a clearheaded, realistic vision that, whether we like it or not, we have been exploiting Mexican labor in California for the benefit of California. We have created this underground labor market, which does not have rights -- and we can go on and on if you want to talk about that -- and that that, in effect, has created a perpetual demand for this type of exploitable labor. That's part of the serious problem that we have to deal with.

How do we turn it around? We've been working with regions throughout Mexico that are the primary immigrant exporting areas, towns throughout Oaxaca, Jalisco, Zacatecas. And what's very interesting is that with very small things that the state can do -- and let me finish on this -- what can the state do? There are ways in which regional governments now in Mexico, that California should partner with, are creating funds for the movement of remittances in combination with other development funds for the creation of small businesses and cooperatives in these regions which are, at this point, having a very important effect in terms of creating employment alternatives.

I give you a model of Florida. The Florida Association of Volunteer Corps, FAVC, founded by Governor Graham, now Senator Graham, 1982, creating a fund, funded by the State of Florida, to work with nonprofits in Florida and with economic development specialists in the immigrant-sending regions throughout the Caribbean. And there's a very interesting history of that type of work.

I think that the only way that really, realistically, we're going to start turning this around is if we have a new vision that we are -- and I would actually suggest that you talk to some of Vicente Fox's current advisors -- Adolfo Aguilar Zinser, Jorge

Castañeda, who I was with in Washington -- who are saying a very interesting new proposition to the United States, exactly this point: Let's get serious. Let's set a target of closing the gap of income. Let's talk about not managing the current relationship, which is basically failing and is basically murdering people.

But how do we create a new vision and a set of institutions that can move in that direction? We have a \$3 billion North American Development Bank which has lent virtually no money. And I must say that I'm usually blamed for being one of the intellectual architects of that institution. I'm ashamed that basically the U.S. and the Mexican government had an opportunity of having a very serious funding strategy over the last six years which they have systematically neglected, and the taxpayers of California paid into that and we've gotten nothing back of that.

I think that we should, in this context of a long-term vision, take these types of international institutions and really make them work.

**SENATOR HAYDEN:** I need you to relate this to NAFTA. It's almost as if, let's scrap NAFTA, which is fine with me, probably fine with Mountjoy, and move towards a new world vision. But NAFTA's there, and Commerce and Trade Agency are there. I'm very depressed by this because in the '80s -- I don't know if you knew -- but I was California's representative to the late Border Economic Commission, which was a do-nothing group if I ever -- I mean, I completely supported President Reagan's eliminating it. But it did give you an opportunity to see the president of Mexico and the governor of Texas and the governor of Arizona and the governor of New Mexico and the governor of California at work. And close up.

One day we went to the presidential offices in Mexico City, and my mission -- I knew I was going to have my head removed -- but my mission was to ask the Mexican authorities what they thought of Governor Brown's proposal for a North American common market, which is what President Fox is probably talking about now. I don't know where this idea came from. Probably somebody in the banking world. But it was one of those ideas, and the idea was killed in a three-minute conversation with the Mexicans who said it violated sovereignty. And I said, "Well, what if we included democracy, human rights, labor protection, environmental protection, whoever can come up with the highest level? Then what about a North American common market to deal with Japan on the one hand and the European unit on the other? But we include democracy provisions within it that were enforceable."

There's so much resistance to this notion, that at the end of the day you wind up with NAFTA. You know, you wind up with incomplete, incoherent solutions that don't really make anybody happy. I don't know anybody who's happy, except politicians can claim they did something and walk away from it.

So how do we get from where we are, which is NAFTA Chapter 11, to any significant alternative? And I'm fascinated by your testimony, but they must have had all kinds of stops and starts. How did they get around them?

**DR. HINOJOSA-OJEDA:** Well, I think we have a very interesting opportunity right now with the newly elected president in Mexico, and I hope that he will continue with some of the themes that he has raised and not back off because of the reaction that he's sure to get in the United States, which basically, I think, does not want to change the status quo. The United States benefits from the uneven relationship with Mexico tremendously right now. And I think California, frankly, has got to take the lead. I think if we in California can understand that this is not working, that we have a perverse relationship with our neighbor, that we can perpetuate poverty there and we perpetuate poverty here.

I think what would be really important is for the California Legislature -- and I'm working right now with, you mentioned Marco Firebaugh. He's who I was with this morning. We're working closely with the California-Mexico Select Committee, and I think that the issue is that we should be planning out from the point of view of California a "what if." You know, what if we actually cared about those communities that we are already linked with and we've been linked with for fifty years in Mexico? We know where they are. We've got maps of them.

**SENATOR HAYDEN:** So what you want is to target investment and incentives into those communities in Mexico which we know generate the most immigration towards the California border.

**DR. HINOJOSA-OJEDA:** That would clearly be an issue that we should start off with doing.

**SENATOR HAYDEN:** Now, can that be done within the NAFTA framework, or is this NAFTA plus?

**DR. HINOJOSA-OJEDA:** The North American Development Bank actually creates a mandate for doing exactly this. A mandate which has basically never been touched upon.



**SENATOR HAYDEN:** And why is that?

**DR. HINOJOSA-OJEDA:** I think it's basically because the Treasury Department of the United States and Hacienda were opposed to the creation of the institution. They did want a straight NAFTA.

**SENATOR HAYDEN:** Let me understand this. You think there's actually some forces who will not say it but are opposed to stabilizing employment in Mexican villages because they actually favor the outcome of having cheap immigrant--

**DR. HINOJOSA-OJEDA:** No, I'm not that instrumentalist in my--

**SENATOR HAYDEN:** Conspiratorial.

**DR. HINOJOSA-OJEDA:** Conspiratorial instrumentalist, no.

No, I think that we've created institutions that have got certain interests that reproduce the inequalities. They don't have to conspire. The institutions almost work out for themselves.

In fact, what we're working on with the Governor is a number of state-to-state relationships, because I don't think it's going to come out of Washington in the initial instance. I think it's going to come out of state-to-state relationships that we really have got a vested interest in, that we can talk about deeper relationships. How, for example, we are linked through educational relationships, through health relationships, through cultural relationships, through labor relationships, and work with the social counterparts and governmental counterparts at the state level to really make effects on actual ways that we can identify that can make a difference in people's lives.

And I think that California as the state in the United States that is most linked and most highly integrated with Mexico has a responsibility to lead the way, to take care of our house from Sacramento these relationships, and I think we can do it. I think that there are models out there in other places around the country that we have not taken on. I think that's the first thing we've got to do.

**SENATOR MOUNTJOY:** Let me just--

**DR. HINOJOSA-OJEDA:** Please.

**SENATOR MOUNTJOY:** If you put money into these areas that are economically depressed, if the people don't have the right to organize, they don't have the safety requirements, they don't have the environmental requirements, then the people will be exploited once again.

**DR. HINOJOSA-OJEDA:** Are you talking about East L.A.?

**SENATOR MOUNTJOY:** Well, anywhere. Sure. I don't care whether it's East L.A. or East Tijuana. Along with this investment, you have to give people certain rights or they'll always be unequal. Exploitation would stop at the border if these people weren't making only 35 cents an hour. If they had a right to higher wages, then you wouldn't have this flood of the necessity of coming over to the U.S. to be exploited, because it's better to be exploited than it is to live in Mexico, I guess. That's the reason they do it or they wouldn't flood in.

So you have to change those policies under NAFTA, and that's what we're here about. Under NAFTA, those policies of nonparticipation by the people is protected.

**DR. HINOJOSA-OJEDA:** I think that there's a very simple way to deal with what you're saying. Actually, interestingly enough -- and I was just in Brussels lecturing on this -- if you look at the North American Commission on Labor Cooperation -- and I understand you Senators had them before, speaking, somebody on that topic -- I mean, it's very interesting. I mean, you're absolutely right. The right of association is not one of the rules under the NAAC that can actually lead to full sanction.

**SENATOR HAYDEN:** NAAC is the N-A-A-C?

**DR. HINOJOSA-OJEDA:** Yes. I would agree with you that we need to take that and to have all of these labor rights be a full candidate for sanctions as a part of where the NAAC is.

I agree, that's fine. And if we agree on that, Senator, I would like us to also think that that's only part of the issue.

The other part of the issue is that we really have created a binational problem here in the way that we are not affording these rights to organize and these rights of workers.

By the way, I'm a Ph.D. from the University of Chicago, economics, all right? I went and studied with my enemy, if you will. Basically, my answer is that we will not get markets alone to reach equity. We need to have enforceable mechanisms for rights, and in that sense I'm in complete agreement with you. But I would be very hesitant for the debate to be this type of a blaming that the issue is only on the Mexican side, because I don't think that that's the case.

**SENATOR MOUNTJOY:** No, no, no. I'm not saying that. I'm saying under NAFTA, that was a part of NAFTA that was left out. They left basically the worker behind. And under NAFTA, that leaving behind is protected -- because you can't change it. We just heard testimony. You can't change it. You have to change the perimeters of NAFTA. You have to change the NAFTA agreement to ensure that those protections are in there for the people or they're never going to be in there.

**DR. HINOJOSA-OJEDA:** I could see a scenario, a very easy scenario, with "President" Gore and President Fox amending that type of a--

**SENATOR MOUNTJOY:** The election's not until the 7th of November.

**SENATOR HAYDEN:** This is very interesting. We have 35 minutes before I have to leave, and I want to get the other testimony. Can you wait, Raúl?

**DR. HINOJOSA-OJEDA:** Sure.

**SENATOR HAYDEN:** Okay. Because I think the power of your testimony is the dreaming of a bigger picture, but by your own testimony, you dreamt up this NADBank. So we have to keep trying to figure out what went wrong with these dreams. I have the same problem.

**DR. HINOJOSA-OJEDA:** That's why I'm here, by the way.

**SENATOR HAYDEN:** Right.

Now, let me talk to the Trade Secretary representative. The Governor vetoed my bills and I'm quite angry about it, as you know. I suppose it means the Governor has a hard time believing there should be a legislature that does anything besides what he wants, when he wants it.

These bills said the following:

(1) The Industrial Relations director should inform the Legislature if there's any trade rules that might affect California law.

(2) The head of EPA and the head of Natural Resources should inform the Legislature if they learn that there's any trade rules that might affect our environment.

Could you incorporate into your testimony why the Governor would not want the Legislature to be informed by a cabinet secretary if a law that we passed is going to be affected by a trade rule?

Sorry to put you on the spot.

**MS. GINA MANDY:** I'll give a chance to incorporate that, but you wanted to know the good news, didn't you?

**SENATOR HAYDEN:** No, I don't want any promotional stuff. We heard from your agency how wonderful NAFTA is and how everything's great, and we sat through that. We said, *Look, there's economists on all sides of this war of numbers about how many jobs are being lost* and what kind of jobs they are, etc., etc., etc.

We want to know what's California doing about it besides promoting California commercial enterprises? And specifically, why don't you in the Davis Administration include your own cabinet members who are concerned about labor and the environment in your discussions? Why is it a closely held secret only in the Trade and Commerce Agency? And even there the testimony was Trade and Commerce has never even had a meeting with the U.S. Trade rep.

So, I'm serious. The implementing legislation says you're supposed to consult the states on a regular basis. It doesn't say your boss, the Secretary of Trade and Commerce. It says the states. Why do you interpret it not to include the Legislature and not to include even other cabinet members who might have some input? And why does the Governor, just to protect this special relationship between your agency and himself and the feds, veto bills that would just allow your cabinet to share with us if they see anything coming down the road?

Is this an abstraction? Don't count on us for support when you lose some trade rule. I mean, Mountjoy's MTBE work and the Governor's MTBE work is being challenged, and we're going to be charged \$900 million if we lose, and nobody has ever bothered to mention to us the case or the 900 million. And when we ask them, they say, *Oh, don't worry about it, we'll win.*

Fine, I hope you do. But, if you lose, where's the money coming from? And if you win this one, will we be informed the next time one of our laws is challenged?

We have a dysfunctional relationship. I can't even tell you how strongly people feel about this, but since I'm leaving, you get the tenor of what is being thought by other members of the Legislature but not expressed, because they don't want to get into a public wrangle.

So, you can tell us all you want about how great NAFTA is, but get back to the issue of what is the relationship between the State Legislature and Governor Davis and the Executive Branch.

**MS. MANDY:** Well, I believe, and it's my understanding, that the relationship is to be an open and collaborative one. We do work together, both the Administration and the Legislature, and have--

**SENATOR HAYDEN:** But if that's true, has there ever been evidence of a meeting or a letter from the Executive Branch to the Legislature mentioning any of the trade agreement's impact on state laws?

The last time we had a hearing with your agency, the testimony was, *No, there never has been.*

Has there been one since? Have you had a meeting with any legislators?

**MS. MANDY:** I personally haven't as director of Foreign Office Operations, but it's my understanding that there has been no subsequent meetings.

**SENATOR HAYDEN:** There's been no subsequent meetings, right.

**MS. MANDY:** Yeah. I'm not positive about that. It's my understanding.

**SENATOR HAYDEN:** All right. Well, the Governor's philosophy is the role of the Legislature is to implement his vision, all right? So what is his vision? Let's hear the testimony, and if it's written, we'll incorporate it in the record as well.

**MS. MANDY:** Well, there are a few things that this Governor has done, and I guess one of the largest things he's done was to invigorate the Border Governors Conference where the agency engaged in an open dialogue with California EPA and the California-Baja California Strategic Environmental Plan, which is a voluntary and cooperative effort among border governors to address mutual concerns about environmental and natural resource challenges.

While previous collaborative environmental efforts have been managed on a project-by-project basis, this plan formalizes and expands those processes. And included in that environmental framework is the transboundary environmental notification impact process, and this process creates the framework for communication amongst the governors that govern states that are on the border, both on the United States side and on the Mexico side.

In addition, something we have within the Trade and Commerce Agency is our Environmental Technology Export Program, and they organize and lead environmental business missions to the U.S. Trade Center in Mexico City. We did last November. We have an actual State of California Trade and Commerce Agency office in Mexico, and we use the U.S. Department of Commerce Foreign Commercial Service to facilitate

business missions, exchange of technological information, and to create strategic alliances.

That is what the agency does and what the Governor has done.

And your last question is: What can the Legislature do?

**SENATOR MOUNTJOY:** Get lost?

**MS. MANDY:** Would you like me to address that? No, of course not. We actually need the Legislature.

**SENATOR HAYDEN:** You need the Legislature to fund you. Is that right? How many PYs do you have?

**MS. MANDY:** In the Trade and Commerce Agency? I believe about 300.

**SENATOR HAYDEN:** Three hundred. I think that's a low estimate.

**MS. MANDY:** I don't believe it's over four hundred.

**SENATOR HAYDEN:** What's your annual budget?

**MS. MANDY:** I know the annual budget for the International Trade and Investment Division, and it's about 12 million. A majority of that is spent for the foreign offices.

**SENATOR HAYDEN:** And when the Governor goes on trade missions to other countries, bringing along Californians who have contributed to his campaigns, do they include human rights advocates, labor representatives, and environmental representatives?

**MS. MANDY:** I'm sorry, I'm not privy to that information on how he chooses.

**SENATOR HAYDEN:** Well, there's only been a limited number, if you could look at their names and do a cross-check on their contributions, and then tell me whether they are representatives of labor, human rights, or environmental groups.

And also, why you're at it, you might want to ask whether there's any pattern of fundraising from California firms who are being helped by your agency to get export advantages outside of California. Because if they show up as major contributors, I think that there will be legislative oversight hearings very quickly.

**MS. MANDY:** Okay, I'll do that.

**SENATOR HAYDEN:** Because this is supposed to be about economic development for people in California and Mexico, and let's not leave out Canada.

I don't understand the strategy of the Commerce Agency to not include labor and environmental groups in its efforts, as if trade doesn't have anything to do except with public subsidies and breaks for companies.

**MS. MANDY:** I guess in a way, if I could say something in defense of that, is the mission in statute is narrowly economic development. And yes, I do understand that labor and environmental issues play a significant role in that, but we also have other departments that address that.

Yes, we work together with the Secretary, Winston Hickox, and with Secretary Mary Nichols. We do work collaboratively. We also work with the Department of Food and Agriculture. I guess our mission, narrowly focused, in order to stay within our mission, is to do economic development -- statewide economic development.

**SENATOR HAYDEN:** Right. It's to promote California exports and California business, and I think that's a fine thing. But the NAFTA agreement's obviously linked business, labor, and environment--

**MS. MANDY:** Yes.

**SENATOR HAYDEN:** --and I don't see any change on the state level to create a similar linkage.

To take the issue away from your agency for the moment, if you look at the California World Trade Commission, it's the same thing. It's to promote California business exports, and everybody on it is a trade expert or business expert, and they haven't adjusted to NAFTA to include environmental or labor people. So why would anybody think the side agreements are anything more than smoke and mirrors or afterthoughts?

I'm not saying NAFTA should be the be-all or end-all, but if we're in a NAFTA world, you would think that the state's agencies would get with it and integrate environment and labor along with commerce, but I don't see that.

**MS. MANDY:** Well, there are members of the Legislature on the World Trade Commission, and the World Trade Commission does advise the agency on which direction to do its programs.

**SENATOR HAYDEN:** How many members of the Legislature on the World Trade Commission?

**MS. MANDY:** I know of two; it might be three, though.

**SENATOR HAYDEN:** Yeah, out of how many?

**MS. MANDY:** I don't know the total. It may be twelve to fifteen.

**SENATOR HAYDEN:** It would be single-digit percentage. I forget whether it's twenty-three or--

**MS. MANDY:** No, it may be twelve to fifteen members of the Commission, something around that.

**SENATOR HAYDEN:** All right. We'll get the numbers on that.

**MS. MANDY:** Yeah, I'm sorry.

**SENATOR HAYDEN:** Jerry Butkiewicz, right?

**MR. JERRY BUTKIEWICZ:** Yes.

**SENATOR HAYDEN:** You've been champing over there. Why don't you give your testimony briefly.

**MR. BUTKIEWICZ:** I guess it's appropriate to go last.

**SENATOR HAYDEN:** No. Any questions we have of the three of you, or you want to comment on each other--

**MR. BUTKIEWICZ:** Well, I do have some comments, but first, on behalf of San Diego, I'd like to thank you, Senator Hayden, for bringing the hearing here to San Diego where we have been impacted by NAFTA. And I'd like to thank Senator Mountjoy for coming down for the hearings also.

I do want to touch on just a couple of points that were talked about today.

When we talk about economic development, I think most of us union leaders in San Diego, we're for economic development. Our question would be: At what cost to the environment, and at what cost to the worker? I think that's why we're not included in that discussion. Because the truth is, it's at any cost to the environment and at any cost to the worker.

So if we participated in that discussion, I think then you would have somebody who didn't agree on every single point. I happen to think that that debate is healthy because then, I think, you come out with a better result.

I do want to touch on a couple of other points, though. I know that a lot of experts have testified on numbers of jobs lost and everything, but I do want to let you know that even the numbers that you see are not accurate. Even the numbers that are reported to you.

Here's a couple of examples, and you might be familiar with a couple of these, because I had relatives that worked at a plant, at a Vans plant -- Vans Shoes that our



kids like to wear -- in Vista, California, where 300 workers were laid off. But when my friends that worked at the plant called, because anything over 50 is supposed to be a plant closure, then there's retraining that's available for you and that, well, that was categorized under the terms of a downsizing.

So they were downsizing. And then I tried to figure out, okay, we downsized them; well, where did they go to? And mysteriously, six months later the 300 jobs showed up at the Tijuana twin plant of the Vans Shoes. But yet, it won't even come out in the report that you see, Mr. Mountjoy, that says how many jobs were lost, okay? Because that wasn't a plant closure; that was a downsizing.

So now they're really getting good at not giving you the real numbers, and they're getting to be experts all right at finding a way to get around the system, because what they're realizing -- and I couldn't agree with my brother more -- the change that took place in the AFL-CIO's position on immigration and workers' rights did not come from Washington, D.C. When we told them that that's the position we wanted them to move to, the leadership of California, I think some of the people in Washington, D.C. felt we were nuts. But I'm going to tell you why the AFL-CIO has that position.

**SENATOR HAYDEN:** The Washington, D.C. labor movement?

**MR. BUTKIEWICZ:** The Washington, D.C. labor movement.

**SENATOR HAYDEN:** Okay.

**MR. BUTKIEWICZ:** And the criticism we took on our new position on immigration. But that new position came from the groundswell of the people. That's where the change is going to have to take place in the free trade agreement. It's going to have to take place with you, Mr. Mountjoy, and with you, Mr. Hayden, and with our legislators and the people who vote in California. It's going to have to come from the bottom up, because no matter what happens in Washington, D.C., they're going to say, "Hell, there goes labor, that special interest group." Well, yeah, my interest happens to be workers.

The Vans plant? It's not union. Is that okay that those 300 people lost their job? Do you think our labor council's going to sit back because they didn't pay dues and let those people get abused like that? Absolutely not. Who represents a worker who doesn't have a union? Nobody. And if the AFL-CIO doesn't step up and represent them, shame on us.

So I want to talk about just a couple other points that you made about the immigrants coming up and having some kind of rights because we have OSHA.

Mr. Mountjoy, if you immigrated from Mexico to try to make life better for your family that was down in Mexico, and you seen an OSHA violation on your construction job site, do you think you would run and call OSHA out to that job site? If you did, you would be fired the next day, and the Border Patrol would be called, and you would be deported.

**SENATOR MOUNTJOY:** If you were illegally here?

**MR. BUTKIEWICZ:** If you were illegally here.

**SENATOR MOUNTJOY:** If you were illegally here, you wouldn't be hired by me.

**MR. BUTKIEWICZ:** I would agree, but that system didn't work. If we were serious about that system, we'd have fined every employer \$10,000 for every illegal worker he hired.

**SENATOR MOUNTJOY:** That's right. Unfortunately, that never came down.

**MR. BUTKIEWICZ:** Of course not. Who stopped that?

**SENATOR MOUNTJOY:** When I ran the construction company, let me tell you, my I-9 reports were in all the time, and we upgraded our I-9's. Now, there are a lot of guys that don't.

**MR. BUTKIEWICZ:** I'm going to give you an example of one that doesn't. I'm going to give you an example of worker rights when we talk about it.

You may have seen us marching in Mission Valley in front of the Mission Valley Hilton Hotel. The reason that we're marching in front of the Mission Valley Hilton Hotel is because we want an organizing drive with the workers at the Mission Valley Hilton Hotel. And during that organizing drive, right before we were going to have the election for the organizing drive, we had a dishwasher at that hotel who had been there for seven years washing dishes, and a week before that election--

[Phone ringing]

**SENATOR HAYDEN:** You're getting a call from Washington.

**SENATOR MOUNTJOY:** The labor guys in Washington don't like what you're saying.

**MR. BUTKIEWICZ:** I don't give a shit what they-- [Laughter] They don't put me in office. The workers in San Diego do.

A week before we had the election, though, Mr. Mountjoy, let me tell you what happened at the Mission Valley Hilton Hotel. When they found out who was on our organizing committee, isn't it mysterious that the INS raided the Mission Valley Hilton Hotel, Mr. Mountjoy? There was a dishwasher in that hotel who had washed dishes at that hotel for seven years. He had a wife and two children. And you know what? He wasn't a legal worker. For seven years he washed dishes for that employer and he never made over the minimum wage. But as soon as he said he wanted to organize a union so he could get health insurance and better wages, the INS was called, the raid was done on the hotel, and he was deported back to Mexico.

Now, I tell you--

**SENATOR MOUNTJOY:** But that had to come from Washington, D.C., not from the hotel owner.

**MR. BUTKIEWICZ:** Oh -- right.

**SENATOR MOUNTJOY:** Wait a minute.

**MR. BUTKIEWICZ:** No, come on. Are you that foolish to believe that he had been there seven years and the employer didn't realize that he wasn't legal until a week before the union election?!!

**SENATOR MOUNTJOY:** Wait a minute.

**MR. BUTKIEWICZ:** I've got some swampland in Florida I want to sell you.

**SENATOR HAYDEN:** Wait. I love this. We have about eight minutes before the hearing is over, so you both can actually get right here in the middle of the ring.

**SENATOR MOUNTJOY:** If the INS came in, then the hotel owner had to either have a great contribution to a politician in Washington, D.C. INS isn't going to react to anything I ever say. They're going to react from Washington, D.C. So maybe it went round the bend. I don't know about that.

I read the news articles when that happened.

**MR. BUTKIEWICZ:** Okay, I'd like to close my testimony because you asked what could we do on NAFTA. Here's what you can do, Senator Hayden.

You heard earlier that if the president of Canada, the president of Mexico, and the president of the United States would all agree that they want changes in that trade agreement, then those changes could be made in that trade agreement. And the only way that those three presidents, and our President -- "President" Gore, I might add --

is going to be able to make those changes is if you and us, as workers, and the community put the pressure on those people to make that happen.

So, I'm really excited about your hearings. Thank you very much for coming.

**SENATOR HAYDEN:** Thanks.

**SENATOR MOUNTJOY:** But don't you agree that you have to change NAFTA and you have to be able to give people in the other countries the same rights that they have here to be equal?

**MR. BUTKIEWICZ:** I would agree, but the change in NAFTA is not going to start in Washington, D.C. The change in NAFTA has to start with you, and you, and me, and you. That's where the change has got to start.

**SENATOR HAYDEN:** Yeah.

**MR. BUTKIEWICZ:** Well, we know her job depends on it not changing, so she ain't going to be with us.

**SENATOR MOUNTJOY:** We need to join that lawsuit to put pressure on Washington, D.C., going back and revisiting this whole agreement in Washington. The whole problem with NAFTA was that the workers were left out.

**MR. BUTKIEWICZ:** Exactly.

**SENATOR MOUNTJOY:** There were no guarantees. We all knew that going in, and many of us -- I opposed NAFTA. So I was one of your brothers in that fight.

**MR. BUTKIEWICZ:** Appreciate it.

**SENATOR MOUNTJOY:** And I still do because it was not an equal deal, and until it's an equal deal with the workers and an equal deal with the environment, an equal deal with everything, then you don't have a good agreement.

**MR. BUTKIEWICZ:** The workers on both sides of your border.

**SENATOR MOUNTJOY:** So I'm on your side.

**MR. BUTKIEWICZ:** Right. The workers in Mexico having the right to organize also.

**SENATOR MOUNTJOY:** And I'm glad that you're a dreamer because you're dreaming about Gore being President, and that's great because I love dreamers.

**SENATOR HAYDEN:** Let me just ask your indulgence. Some of the argument by the Zapatistas has been that NAFTA is death. Other people think it's Paradise. These job arguments go back and forth. But to bring this back to what we can perhaps recommend to the California Legislature, number one, the biggest thing I'm

hearing is that we should think big picture and urge the Governor and the Legislature to come up with a California-based improvement on, or alternative to, NAFTA and not wait for Mexico City or Washington. Consult them but try to come up with a California approach and to make it multistate in order to increase our leverage. Find allies either on the Canadian border or the Mexican border, other states. Hard to do but that's what I'm hearing.

More narrowly, I think that we need to go back and find a way to integrate what the Trade and Commerce Agency does with the Resources Agency and EPA and the Legislature, and maybe Mr. Firebaugh's Select Committee can be a venue for discussing how to do that.

I also heard, if I got it right, that California needs to do its own monitoring or data collection if EDD doesn't have the capacity, and we need to contract with the University because, for instance, your agency has these export statistics, but I'm not aware if we have import statistics. There's a hundred other things in the way of data collection that would be needed if California was to go its own way.

I think that we need to integrate labor and the environment into our World Trade Commission and to any meetings between California and Mexico. Somebody had said that we should try to organize a meeting of legislators from not only around the country but Canada and Mexico who might have discontent with NAFTA as well to hear what they have to say from a Canadian perspective or a Mexican perspective about getting it right in the future.

There were other very interesting comments about this issue of the travel by state employees, which I thought was very hands on, very specific, and they'll show up in the record. But I wanted to thank people for making all those comments and assure you that whether or not there's a giant sucking sound may depend on what kind of ear you have, but our ears did hear what people had to say here. Thank you all for coming.

Now, if there's other final comments -- Raúl, go ahead, or the good people from the Trade and Commerce, or Jerry, or Mr. Mountjoy, and then we'll end the hearing.

**DR. HINOJOSA-OJEDA:** Thank you. I just wanted to thank you all very much for having this hearing. There were two points I wanted to make.

I'm glad you brought up this issue about data and EDD. I'm on the Economic Strategies Panel, for example, of the State of California which has not met once since Governor Davis--

**SENATOR HAYDEN:** I was going to bring that up.

**DR. HINOJOSA-OJEDA:** I've been appointed. I got a very fancy plaque. We've never met.

**SENATOR HAYDEN:** Is it costing the taxpayers anything?

**DR. HINOJOSA-OJEDA:** My good buddies up there at Trade and--

**MS. MANDY:** I'm taking notes.

**DR. HINOJOSA-OJEDA:** Okay. I like them all very much but this is outrageous.

**SENATOR HAYDEN:** That was the Vasconcellos bill setting that up?

**DR. HINOJOSA-OJEDA:** A one trillion dollar economy with a \$250,000-a-year budget just to do these studies apparently, and they've not met once.

**SENATOR HAYDEN:** But they've never met, as I understand it. Right.

**DR. HINOJOSA-OJEDA:** Now, the State of California has a serious problem in terms of its data capability of understanding the labor impacts with NAFTA. We have a web site where you can go, type in your zip code, and you will find out everything what's going on in your area.

We've proposed for two years now to the Governor's Office a strategy that is certified by the American Economic Association of how we could actually get more money to displaced workers in California if we followed through with just the tracking of this thing in this new way. We are convinced that the NAFTA TAA data right now is about a 60 percent undercount and that that is money to--

**SENATOR HAYDEN:** TAA is the Trade Adjustment Assistance money.

**DR. HINOJOSA-OJEDA:** That's the Trade Adjustment Assistance. This would be money into helping workers in California right now. I would suggest that that be something that we can talk about, and AB 580, which was a bill to set up an ongoing monitoring with Mexico.

And finally, let me just say that on December 8th and 9th, we will have legislators from Mexico, Canada, and California meeting at UCLA -- you'll both get an invitation for that -- to exactly talk about the broader vision of where--

**UNIDENTIFIED SPEAKER:** When?

**DR. HINOJOSA-OJEDA:** December 8th and 9th at UCLA, and we'd love to have you all there and continue the dialogue, and I thank you for that.

**SENATOR HAYDEN:** All right, thank you very much.

Anything else?

If not, there were some people that wanted to make public comments, and I'm sorry. We can leave the record open, however, if staff will stay a few minutes. I've got to catch a plane, but we can incorporate those public comments if they're verbal. Or if they're written, we'll incorporate them in the record. This will go back to the Legislature for its work in January.

Thank you very much, one and all, for coming to the hearing.

[Additional testimony taken]

**MR. RICHARD SKAGGS:** I'm Richard Skaggs from Onestar Environmental Products, and my testimony is over businesses in California.

I'm one business that is a woman-owned company. I was invited...to ask to help them with their environmental problems. Councilman Alatorre sent me a letter, and here's a copy for your committee, along with your Consulate General from Mexico, who asked us to come to Mexico to test a product called D-12 ADX that was tested by the State of California in proving to lower emissions. Our company has the patent. The patent number is here, that I will enclose in my testimony, under the U.S. Patent Office.

Also, we were ensured by the government there in Mexico City that we would work as a team to help lower emissions in Mexico, and instead, what they did, they tried to break the formula and the product down, and when we caught them they claimed that under the NAFTA we can't do anything about it. And they opened an office up in San Diego and started selling this California product that's been manufactured in California for the last 15 years, and the patent is held by this company. We had to lay off employees due to the fact that the Mexican government allowed Mexican citizens to come over and mislead us by bringing us to Mexico City under the Clean Air Act and claiming that they wanted help at a cost-effective way to clean up our air.

Our company did that for them and now we're being punished because it's hard for us to get the government to move in. It's always the private sector has to spend hundreds of thousands of dollars on legal counsel to get back what belongs to us.

If we think NAFTA's going to work, we're kidding ourselves for big business, small business, and the labor movement. It's hurting the labor movement and it's hurting business. And here's a perfect example of a small woman-owned company who owns a product that was tested by the California Air Resources Board and lowered emissions and would help Mexico, and instead of working together as a team with California, they decided that they could take this product by themselves, make all the money themselves, and not share it with the labor force of California, and now it caused a company to lay off employees.

And I will follow up with a written testimony. I thank you very much, Chairman, and I will follow up with that.

Thank you very much.

--ooOoo--